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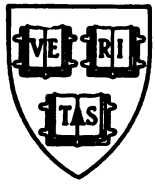

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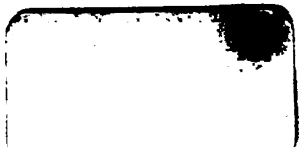

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THE

MUNICIPAL CORPORATION ACT,

5 & 6 WILL. IV. c. 76,

AND THE

ACTS SINCE PASSED FOR AMENDING THE SAME, AND OTHERWISE IN RELATION TO MUNICIPAL CORPORATIONS:

WITH

Notes and References to the Cases thereon;

AND

AN APPENDIX

CONTAINING THE

PRINCIPAL STATUTES REFERRED TO, INCLUDING THOSE RELATING TO MANDAMUS AND QUO WARRANTO:

A LIST OF BOROUGHS HAVING QUARTER SESSIONS,

Borough Court Rules, &c. &c.

BY CHRISTOPHER RAWLINSON, ESQ.,
OF THE MIDDLE TEMPLE, BARRISTER AT LAW,
(NOW CHIEF JUSTICE OF MADRAS).

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CORRIGENDA.

Page 71, *line* 4 *of note, for* "17 & 18 Vict.," *read* "16 & 17 Vict."
293, *line* 3 *of note, for* "16 & 17 Vict. c. 79, s. 9," *read* "13 & 14 Vict. c. 91, s. 9, post, p. 530."
359, *add to the note,* "See also 13 & 14 Vict. c. 91, s. 9, post, p. 530."

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THE

MUNICIPAL CORPORATION ACT, &c.

5 & 6 WILL. 4, CAP. 76.

An Act to provide for the Regulation of Municipal Corporations in England and Wales.

[*9th September*, 1835.]

WHEREAS divers bodies corporate at sundry times have been constituted within the cities, towns, and boroughs of *England* and *Wales*, to the intent that the same might for ever be and remain well and quietly governed; and it is expedient that the charters by which the said bodies corporate are constituted should be altered in the manner hereinafter mentioned; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That so much of all laws, statutes, and usages (1), and so

Repeal of all Acts, charters, and

(1) **All laws, &c., inconsistent with the provisions of this Act, are by this section *expressly* repealed. In the absence, however, of such an express enactment, the Courts would**

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customs inconsistent with this Act.

much of all royal and other charters, grants, and letters patent now in force relating to the several boroughs named in the schedules (A.) and (B.) to this Act annexed, or to the inhabitants thereof, or to the several bodies or reputed bodies corporate named in the said schedules, or any of them, as are inconsistent with or contrary to the provisions of this Act, shall be and the same are hereby repealed and annulled.

Reservation of all rights of property

II. And whereas in divers cities, towns, and boroughs, the common lands and public stock of such

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have been bound to act on the maxim—"*Leges posteriores priores contrarias abrogant.*" The question of inconsistency remains the same, and must be decided in either case (see post, s. 105, *note*). In *Williams* v. *Pritchard*, 4 T. R. 3, (recognised in *Reg.* v. *Poor Law Commissioners*, 6 A. & E. 8), Lord *Kenyon* uses the following language:—"It cannot be contended that a subsequent Act of Parliament will not control the provisions of a prior statute, if it were intended to have that operation; but there are several cases in the books to shew, that, where the intention of the legislature was apparent, that the subsequent Act should not have such an operation, there, even though the words of such statute taken strictly and grammatically would repeal a former Act, the Courts of law, judging for the benefit of the subject, have held that they ought not to receive such a construction."—See also 6 A. & E. 42, *acc.*

But a later statute, *general* and affirmative, does not abrogate or repeal a former which is *particular*. See Com. Dig., Parliament, (R. 9), and the cases there cited.

The charters, &c., and local Acts relating to the several boroughs named in the schedules, are still in force and unrepealed, save in those cases where they are inconsistent with the provisions of this Act: but the powers exercised under the local Acts may be transferred, under s. 75 of this Act, to the town council.

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and beneficial exemptions to freemen, their wives and children.

cities, towns, and boroughs, and the rents and profits thereof, have been held and applied for the particular benefit of the citizens, freemen, and burgesses of the said cities, towns, and boroughs respectively, or of certain of them, or of the widows or kindred of them, or certain of them, and have not been applied to public purposes; Be it therefore enacted, that every person who now is or hereafter may be an inhabitant of any borough, and also every person who has been admitted or who might hereafter have been admitted a freeman or burgess of any borough if this Act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice, shall have and enjoy and be entitled to acquire and enjoy the same share and benefit of the lands, tenements, and hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any lands, tenements, and hereditaments, and any sum or sums of money, chattels, securities for money, or other personal estate, of which any person or any body corporate may be seised or possessed in whole or in part for any charitable uses or trusts, as fully and effectually, and for such time and in such manner, as he or she by any statute, charter, bye-law, or custom in force at the time of passing this Act might or could have had, acquired, or enjoyed in case this Act had not been passed (1): Provided

(1) The effect of this section of the statute is to continue to all persons, who before the passing of the Act were entitled

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Parkes

always, that the total amount to be divided amongst the persons whose rights are herein reserved in this behalf shall not exceed the surplus which shall remain after payment of the interest of all lawful

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to or possessed of corporate benefits, whether by virtue of any usage, custom, bye-law, or otherwise, the enjoyment of them; and to make it obligatory on the corporation to continue to render to such individuals the benefits which they enjoyed before, subject indeed to anything which before would have defeated the bye-law or custom under which they were enjoyed.—See Baron *Parke's* judgment in *Hopkins* v. *Mayor &c. of Swansea*, 4 M. & W. 621; affirmed in the Exchequer Chamber, 8 M. & W. 901.

The declaration in the above action (debt) stated, that certain lands were, in 1762, inclosed by Act of Parliament, reciting the fee-simple to be in B., and that the mayor and burgesses of S. were entitled to the right of pasturage; and it directed that —— acres should be allotted to the corporation, who were empowered to lease them on such terms, &c. as the burgesses in common-hall should think proper; that by a bye-law it was accordingly directed, that leases of the land should be granted to burgesses at certain rents, out of which certain annual payments should be made to the twelve senior burgesses (but that no burgess who should take a lease should receive any of such rents), by the common attorney of the borough, whose office was abolished by the Municipal Act.

Held, that such bye-law was valid, and (by the Court of Exchequer) that an action of debt was maintainable on it at common law, by the parties to whom such payments were granted by it; and that such action was maintainable *under this section* against the corporation at large.

Held also, that, after payment of any debts chargeable on these particular lands, *all the surplus* rents should have been paid in discharge of the above demands; and that the true construction of the Act of Parliament was, "that the body corporate had not the power to defeat the right of the corporators or freemen by any *voluntary* act of theirs in favour of other creditors."

See s. 92, post, saving "all rights, interests, claims, or de-

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debts chargeable upon the real or personal estate out of which the sums so to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses which, on the fifth day of June, were defrayed out of or chargeable upon the same: Provided also, that nothing hereinbefore contained shall be construed to apply to any claim, right, or title of any burgesses or freemen, or of any person, to any discharge or exemption from any tolls or dues levied wholly or in part by or to the use or benefit of any borough or body corporate; and that after the passing of this Act no person shall have or be entitled to claim thenceforward any discharge or exemption from any tolls (2) or dues lawfully levied in whole or in part by or to the use of any body corporate, except as hereinafter is excepted: Provided nevertheless, that every person who, on the fifth day of June in this present year*, was an inhabitant, or was or was entitled to be admitted a freeman or burgess of any borough, or who on the said fifth day of June was the wife or widow, son or daughter of any freeman or burgess of any borough, or who on the said fifth day of June was bound an apprentice, shall be entitled to have or acquire and enjoy the same discharge or exemption

* 1835.

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mands of all persons in and upon the real and personal estate of any body corporate," &c.

See also s. 90, post, as to bye-laws.

(2) This exemption from tolls is extended by s. 9 of 6 & 7 Will. 4, c. 104, which provides, that nothing in this section shall alter or affect the exemption from tolls enjoyed by persons in virtue of *other* than corporate rights.

See *Reg.* v. *Frost*, 8 A. & E. 822, in note to s. 92, post.

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from any tolls or dues lawfully levied in whole or in part by or to the use of any borough or body corporate as fully and for such time and in such sort as he or she, by any statute, charter, bye-law, or custom in force on the said fifth day of June might or would have had, acquired, and enjoyed the same if this Act had not been passed, and no further or otherwise: Provided also, that where, by any statute, charter, bye-law, or custom in force within any borough at the time of passing this Act, any person whose rights in this behalf are herein reserved would have been liable in case this Act had not been passed to pay any fine, fee, or sum of money to any body corporate, or to any member, officer, or servant of any body corporate, in consideration of his freedom, or of his or her title to such rights as are herein reserved, no such person shall be entitled to have or claim any share or benefit in respect of the rights herein reserved as aforesaid until he or she shall have paid the full amount of such fine, fee, or sum of money to the treasurer of such borough, appointed under the provisions of this Act, on account of the borough fund hereinafter mentioned: Provided also, that nothing in this Act contained shall be construed to entitle any person to any share or benefit of the rights herein reserved, who shall not have first fulfilled every condition which, if this Act had not passed, would have been a condition precedent to his or her being entitled to the benefit of such rights, so far as the same is capable of being fulfilled according to the provisions of this Act, or to strengthen, confirm, or affect any claim, right, or title of any burgesses or freemen of any borough or body corporate, or of

Proviso as to reserved rights.

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any person, to the benefit of any such rights as are hereinbefore reserved, but the same in every case may be brought in question, impeached, and set aside in like manner as if this Act had not been passed.

No freedom to be acquired by gift or purchase.

III. Provided always, and be it enacted, that from and after the passing of this Act no person shall be elected, made, or admitted a burgess or freeman of any borough by gift or purchase.

2 Will. 4, c. 45.

IV. And whereas the right of voting in the election of members to serve in Parliament was by an Act passed in the second year of the reign of his present Majesty, intituled *An Act to amend the Representation of the People of England and Wales*, preserved to all persons who then were or thereafter might become freemen or burgesses of any city or borough, subject to the conditions and provisions in that Act contained (1); Be it therefore

Reservation of the parlia-

(1) The 32nd section of the Reform Act, 2 Will. 4, c. 45, enacts, that freemen are not to vote in future parliamentary elections for boroughs, unless resident, &c.; with a proviso, "that no person who shall have been elected, made, or admitted a burgess or freeman since the 1st day of March, 1831, otherwise than in respect of birth or servitude, or who hereafter shall be elected, made, or admitted a burgess or freeman, otherwise than in respect of birth or servitude, shall be entitled to vote as such in any such election for any city or borough as aforesaid, or to be so registered as aforesaid: Provided also, that no person shall be so entitled as a burgess or freeman in respect of *birth*, unless his right be originally derived from or through some person who was a burgess or freeman, or entitled to be admitted a burgess or freeman previously to the 1st day of March, 1831, or from or through

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mentary franchise to freemen.

enacted, That every person who, if this Act had not been passed, would have enjoyed, as a burgess or freeman, or might hereafter have acquired, in respect of birth or servitude, as a burgess or freeman, the right of voting in the election of a member or members to serve in Parliament for any city or borough, shall be entitled to enjoy or acquire such right of voting as fully as if this Act had not been passed; and the town-clerk of every city or borough returning a member or members to Parliament shall at all times hereafter do and perform all things appertaining to the due registration of the freemen or burgesses of such city or borough, according to the provisions of the said Act.

Freemen's roll to be made out and kept by the town-clerk.

V. And be it enacted, that the town-clerk of every borough shall, on or before the first day of December next, make out a list, to be called "The Freemen's Roll" (1), of all persons who at the time

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some person who since that time shall have become, or shall hereafter become, a burgess or freeman in respect of *servitude*."

See *Reg.* v. *Pepper*, in note (4) to the next section.

(1) Before this Act, the admission and enrolment of freemen were made in the corporation book kept for that purpose. Upon an admission and enrolment under this Act (see s. 22) no stamp is required, as was the case on admission and enrolment in order to secure the exercise of the parliamentary elective franchise; but in this latter case, it is now provided by the 1 & 2 Vict. c. 35 (which see post), that no stamp duty shall be chargeable on the admission of any person entitled to take up his freedom by birth or servitude, in any city or borough in England returning a member or members to serve in Parliament.

This statute is only prospective; so that admissions pre-

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of the passing of this Act shall have been admitted (2) as burgesses or freemen of such borough; and that whenever any person shall hereafter become entitled to be admitted a burgess or freeman for the purposes aforesaid of such borough in respect of birth, servitude, or marriage (3), and shall

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vious to the passing of it, if required to be given in evidence, must be stamped.

"The Freemen's Roll" will now contain the following classes of persons:—

1st. All persons who on the 9th of September, 1835, had been admitted as burgesses or freemen.

2nd. All persons who were entitled on the 9th of September, 1835, to have been admitted, and who have since 7 Will. 4 & 1 Vict. c. 78 (see next note), been admitted.

3rd. All persons who since the 9th of September, 1835, have become entitled to be and have been admitted in respect of birth, servitude, or marriage.

(2) This section, it will be observed, relates only to persons who at the time of the passing of the Act *shall have been admitted* freemen, &c., or who shall thereafter become entitled to be admitted, thus excluding all persons who were entitled to have been admitted, but who had neglected to be so, before the passing of the Act. This is now remedied by the 27th section of 7 Will. 4 & 1 Vict. c. 78, which see post.

(3) These claims must be examined and decided by the mayor, with reference to the charter and the local customs and usages of each particular borough; but it should be borne in mind, that no usage, however constant and reasonable, nor any bye-law, can be of any force to alter or control the positive enactment of a charter. See *The Hellston case*, 2 Doug. 5; and also 3 Doug. 289.

Thus where, by the usage of a particular borough, a person having served a seven years apprenticeship to a freeman residing in the town is entitled to his freedom; and by a bye-law, the indentures must be enrolled by the town-clerk within four months from the date: an apprentice who is

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claim to be admitted accordingly, the mayor of such borough shall examine into such claim, and upon such claim being established (4) every such person

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bound to a freeman resident only occasionally, and whose service is to be performed at any place, is not entitled to have his indentures enrolled. *Rex* v. *Marshall*, 2 T. R. 2. See also *Rex* v. *Powell*, 8 T. R. 639, where the charter required that all persons, before their admission as burgesses, should be seised and possessed of a freehold estate of a specified value.

See also *The Maldon case*, F. & F. 658. By the usage in the borough of Maldon, persons were not entitled to their freedom by birth, unless they were born *after the admission* of their fathers. The corporation having fallen into decay, a new charter was granted in October 1810. By the provisions of the new charter, all persons were to be placed in the same condition as they would have been had there been no interruption. The voter's father, William Ambler, married the daughter of a freeman; the voter, John A., was born before 1802, and the father not admitted till 1811; the voter himself in 1835; William Ambler could not be admitted before the birth of John, in consequence of the state of the corporation: and the committee held the admission of 1811 to be sufficient, and his vote good.

In order to entitle a party to his freedom *by servitude*, in addition to the observance of any particular local custom or usage, there must be a proper binding by deed duly stamped (though it need not be by indenture, 31 Geo. 2, c. 11), and a service under such deed for the time required by the custom of each borough. See *Rex* v. *Inman*, 4 B. & Ald. 57; *Rex* v. *Rowe*, 4 Burr. 2287; *Rex* v. *Saint Paul's, Bedford*, 6 T. R. 452; *Rex* v. *East Bridgford*, Burr. S. C. 133. But for the numerous cases relating to apprenticeships, see Nolan's Poor Laws, Archbold's Poor Laws, and Burn's Justice, tit. "*Poor*."

(4) No time appears to be fixed at which such claim must be made: a party, therefore, it is presumed, if entitled, may claim to be and be admitted even as late as the day of election. See *Okehampton case*, 1 Fraser, 166, where a freeman's

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shall thereupon be admitted and enrolled by the town-clerk of such borough upon the freemen's roll; and the town-clerk shall keep a true copy of such roll, to be perused by any person without payment of any fee at all reasonable times (5), and shall deliver a copy thereof to any person requiring the same, on payment of a reasonable price for such copy.

Corporations to be styled mayor, aldermen, and burgesses.

VI. And be it enacted, that after the first election of councillors under this Act in any borough, the body or reputed body corporate named in the said schedules in connexion with such borough shall take and bear the name of the mayor, aldermen, and burgesses of such borough, and by that name shall have perpetual succession, and shall be capable in law, by the council hereinafter mentioned* of such borough, to do and suffer all acts which now lawfully they and their successors respectively may

* § 25.

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vote was held good, the claim having been made on Sunday, and Monday being the day of election.

When once admitted and enrolled, a party can be removed only by the Court of Queen's Bench.

Where a party is only on the freemen's roll kept under this section, but not on the burgess list (s. 15), nor on the list of voters under s. 46 of the Reform Act, the Court will not grant a quo warranto information against him, for merely claiming to be a burgess of the borough; at least, unless it be shewn that there is corporate property in which he may take an interest. *Reg.* v. *Pepper*, 7 A. & E. 755. And it is very doubtful whether such a claim would be any ground for such an information; for there must be a *user* as well as a claim of a franchise, in order to found an application for an information in the nature of a quo warranto. See *Rex* v. *Whitwell*, 5 T. R. 85.

(5) See post, in note to s. 35, *Rex* v. *Arnold*, 4 A. & E. 657.

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do and suffer by any name or title of incorporation; and the mayor of each of the said boroughs shall be capable in law to do and suffer all acts which the chief officer of such borough may now lawfully do and suffer, so far as the same respectively are not altered or annulled by the provisions of this Act (6).

Boundaries of certain bo-

VII. And be it enacted, that, after the passing

(6) It was said by *Patteson*, J., in *Corporation of Ludlow* v. *Tyler*, 7 C. & P. 537, that this Act does not create new corporations, though in many cases it alters the name and title of incorporation, and makes new provision with respect to the constitution of the corporate body. And see *Attorney-General* v. *Kerr*, 1 Beavan, 420; *Attorney-General* v. *Corporation of Newcastle*, 5 Beavan, 15; *Attorney-General* v. *Corporation of Leicester*, 9 Beavan, 546, *acc.* So, in the case of *Doe* d. *Governors of Bristol Hospital* v. *Norton*, 11 M. & W. 920, *Parke*, B., in delivering judgment, says, that "though the name and style of the corporation, and the mode of electing the members, are changed, the identity of the body itself is not affected."

By the new name alone can the corporations mentioned in the schedules to this Act sue and be sued; see 2 Lord Raymond, 1238, 1239. See also *Rex* v. *Morris*, cited Id. 1238, where a writ of mandamus was quashed, being directed to the mayor and burgesses of the city of Lincoln, in the county of Lincoln, when it should have been in the county of the city of Lincoln.

In the case of a *city*, the proper title is, "mayor, aldermen, and *citizens* of such city." (See the interpretation clause, s. 142; and also s. 137, post.) *Attorney-General* v. *Corporation of Worcester*, 2 Phillips, 3; *Corporation of Rochester* v. *Lee*, 15 Sim. 376.

As to misnomer of corporations, see the case of *Mayor and Burgesses of Lynne Regis*, 10 Rep. 120, 123; and the cases there cited. See also *Mayor &c. of Carlisle* v. *Blamire*, 8 East, 487; *Rex* v. *Croke*, Cowper, 29.

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of this Act, the metes and bounds of the several boroughs named in the first section of the said schedules (A.) and (B.) for the purposes of this Act shall be the same as the limits thereof respectively settled and described in an Act passed in the second and third year of the reign of his present Majesty, intituled *An Act to settle and describe the Divisions of Counties and the Limits of Cities and Boroughs in England and Wales, so far as respects the Election of Members to serve in Parliament;* and the metes and bounds of the several boroughs named in the second section of the said schedules for the purposes of this Act shall be and remain as the same are now taken to be, until such time as Parliament shall otherwise direct: Provided nevertheless, that notwithstanding anything herein contained, no parish or place, or part of any parish or place, which is detached from the main part of such borough or county of a city or town corporate, shall after the passing of this Act be included within any such borough or county; and, subject to this provision, the metes and bounds of every such borough and county shall include the whole of the liberties of such borough or county by land or by water as the same now are or are taken to be (7).

Boroughs to be those settled by 2 & 3 Will. 4, c. 64.

Boundaries of other boroughs to remain until altered by Parliament.

Proviso as to detached parts.

VIII. And be it enacted, that every place and

Every place included

(7) This provision is repealed by 6 & 7 Will. 4, c. 103, s. 1; by which also new provisions are made as to the boundaries of the boroughs named in the 1st sections of schedules (A.) and (B.) and also as to the boundaries of the boroughs named in the 2nd sections of the same schedules: see the note to s. 1 of 6 & 7 Will. 4, c. 103, post.

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within the bounds of a borough to be part of such borough.

precinct which shall be included within the metes and bounds of any borough as hereinbefore provided, and none other, shall be part of such borough (1), and in those boroughs which are counties of themselves shall be part of such county and of none other (2); and in every case in which the metes and bounds of any borough or county under the provisions of this Act shall not include any place or precinct which before the passing of this Act was part of such borough or county, such place or precinct shall thenceforward be taken to be part of the county wherein such place or precinct is situated, or with which it has the longest common boundary: Provided nevertheless, that if any such place or precinct shall have been liable before the

Parts cut off from the borough to be declared part of the adjoining county.

Proviso as to rate-payers.

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(1) Some of the copies of this Act printed by the King's Printer had, after the word "borough," "*for all the purposes of this Act*," but these words are not to be found in the Parliament Roll.

(2) Clifton, which was in the county of Gloucester, was by the Boundary Act (2 & 3 Will. 4, c. 64) made part of the parliamentary borough of Bristol, which is a county of itself, and is in the 1st section of schedule (A.) to this Act. It was held that, after the passing of this Act, the Gloucestershire justices had no longer the power to make an order for diverting a foot-way in Clifton, which had ceased to be within their jurisdiction, having become part of the county of the city of Bristol. *Rex* v. *Justices of Gloucestershire*, 4 A. & E. 689. See also *Reg.* v. *Recorder of Hull*, 8 A. & E. 642, n.

It was held also, in *Rex* v. *Piller*, 7 C. & P. 337, that, if a felony be committed in that part of the county of a town which has been added to it under the above sections, it must be tried by a jury of the county of the town.

See post, 6 & 7 Will. 4, c. 103, s. 1, and the note to that section.

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passing of this Act to contribute to any rate made for the purpose of satisfying any lawful debt to which the rate-payers of such borough or county were liable to contribute before the passing of this Act, and in case any difference shall arise concerning the proportion of such debt as ought therefore to be paid and contributed in respect of such place or precinct, it shall be lawful for the senior justice of assize for the county of which such place or precinct shall thenceforward be taken to be part, on his circuit, on the application of the council of such borough, or of the chairman of a public meeting of the rate-payers of such place or precinct, to appoint, by writing under his hand, a barrister not having any interest in the question to arbitrate between the parties, and by his award (3) under his hand and seal to assess the proportion, if any, of such debt as ought therefore to be paid and contributed in respect of such place or precinct; and such arbitrator shall also assess the costs of the arbitration, and shall direct by whom, and in what proportion, and out of what fund, the same shall be paid; and such rate as aforesaid shall continue to be levied by warrant of the council of such borough, and paid by such place or precinct, as if this Act had not passed, until such proportion shall have been fully paid and satisfied to the treasurer of the borough, and no longer: Provided nevertheless, that every county gaol, house of correction, or lunatic asylum, court of justice, or judge's lodging, which at the time of the passing of this Act is taken to be for any purpose within any county, shall still, for all such purposes, be taken to be within such county,

Proviso.

(See post, 6 & 7 Will. 4, c. 103, s. 1—and 7 Will. 4 & 1 Vict. c. 78, s. 41.)

(3) See also 7 & 8 Vict. c. 93, post.

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anything herein contained to the contrary notwithstanding.

Occupiers of houses and shops rated for three years to the

IX. And be it enacted, that every male person of full age who on the last day of August in any year shall have occupied any house, warehouse (1),

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(1) The omission of the words "*or other building*," which are in the 27th section of the Reform Act, has got rid of a prolific source of difficulty in the revising courts. The effect, however, has been to exclude the occupiers of large buildings, such as a range of stables, slaughter-houses, detached attornies' offices, breweries, &c., a consequence probably not contemplated by the framers of this section.

The following express decisions on this section have been made by the Court of Queen's Bench.—A person residing in a house, for the *whole* of which he is rated, is entitled to be on the burgess roll as an occupier of a house, notwithstanding he lets a room in the house, at a yearly rent, to a person who does not sleep there. *Reg.* v. *Mayor, &c., of Eye*, 9 A. & E. 670. It was determined also in the same case, page 677, that where A., the tenant and occupier of a house, underlet the cellar, which was beneath, and had an internal communication with the house, but for which cellar A. was not rated, the undertenant using it as a warehouse and being separately rated for it, A. was not entitled to be registered, under this section, for the house independently of the cellar. It will be observed, that in this case, there being an *internal* communication, A. in law occupied the whole (*Rex* v. *Sefton*, Russ. & Ry. 202), but in fact was only rated for part. By observing this latter fact, the decision is doubtless correct, though, from the report of it, it does not at first sight appear reconcileable with previous decisions.

It was held also in the same case, (*In the matter of Evans*, Id. 679,) that where the premises occupied, described as houses, were under the same roof, and opened on a common passage and staircase, the occupier of each set of premises, being duly rated, was qualified under this section of the Act.

It may be now taken as settled, that where a house

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counting-house, or shop within any borough during that year and the whole of each of the two preced- relief of the poor, entitled to be burgesses, if resident house-holders within seven miles.

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is let out in separate portions to different tenants, and *the owner or landlord does not reside on the premises*, though there is but one outer door common to all the tenants, each distinct portion so let is the house of such occupier. See *Rex* v. *Trapshaw*, 1 Leach, 427; *Rex* v. *Carroll*, Id. 680; *Rex* v. *Bailey*, 1 Mood. C. C. 23; and *Littledale*, J., in *Reg.* v. *Mayor, &c., of Eye*, 9 A. & E. 680.

A question has been raised, whether *joint occupiers* of a house, warehouse, counting-house, or shop, are entitled to be registered under this section. It is contended that a man cannot be deemed an occupier of a house (i. e. a *whole* house) who occupies it jointly with another; and reliance is placed on the express provision for joint occupation to be found in the Reform Act, and on there being none in this Act.

It appears from Alcock's Registration Cases, p. 2, that, on a case being submitted for the opinion of the Irish Judges, whether two joint tenants occupying a house of the clear yearly value of 20*l.* could be registered, it was unanimously held that they could not: and on a case being lately submitted to some learned counsel from a borough in the North of England, they held themselves bound by this decision. But it is submitted, that as joint-tenants are seised *per my et per tout*, &c., and hold, as Lord *Coke* says, *totum conjunctim et nihil per se separatim*, the above decision may fairly be questioned. It should be observed, that no question of value arises under this Act. The practice has been, it is believed, almost universal, to admit the joint occupiers of warehouses, counting-houses, &c.; and the adoption of a contrary course would have had the effect of excluding some of the wealthiest voters in our largest boroughs. That each of the joint holders of a house occupied by them as *partners in trade* is a "*householder*," has been decided.—See C. J. *Abbott's* judgment in *Rex* v. *Hall*, 1 B. & C. 123*. See also

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* In delivering the judgment of the Court in this case,

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ing years, and also during the time of such occupation shall have been an inhabitant householder (2)

Rex v. *Poynder*, 1 B. & C. 178. The facts of this last case, which scarcely varied from those of the preceding, were as follows:—A., B., and C., carrying on trade in partnership, had a dwelling-house, yard, and premises in a parish in the city of London; all the partners were in the habit of frequenting the premises daily, for the purpose of business; but none of them resided there. The dwelling-house was inhabited by a clerk, who managed the business for them; but the rent, rates, and taxes were paid by the firm:—*Held*, that each of the partners was a *householder* within the 43 Eliz. c. 2, and liable to serve the office of overseer.

In arguing this last case, a distinction was attempted to be drawn between the cases where the legislature intended to confer a benefit, and those where it imposed a burden. But on this the Court observed, "We are of opinion that there is no foundation for such a distinction, and that the same rule of construction ought to prevail in all cases."

(2) Under this section, a party must be an inhabitant householder, in addition to his *occupation*. The occupier, therefore, of a shop, counting-house, or warehouse within the borough, is not entitled to be upon the burgess-roll, unless he also holds a *house* within the borough, or within seven miles of it. All non-residents, lodgers, and inmates are thus excluded from the franchise under this Act, as under the Reform Act, 2 Will. 4, c. 45.

The fact of an occupier of a shop holding such house need

Abbott, C. J., observed, "It will be obvious to every one who has the slightest knowledge of the modern habits of persons engaged in the most respectable branches of trade and commerce in all the great towns in England, than an exclusion of persons in the situation of these gentlemen, would be an exclusion, in this and many other cases, of a very large portion of those who are best qualified for the discharge of the particular duty that may be the subject of inquiry."

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within the said borough, or within seven miles of the said borough, shall, if duly enrolled in that year

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not be mentioned or appear in the burgess list. See schedule (D.) to this Act.

A party is not the less a *householder*, or the less an occupier of a house, because he lets a portion of his house to lodgers; the retention of any part of the house as his own dwelling gives him the legal occupation of the whole; the occupation of the lodger is considered in law that of the landlord, who is the party liable to be rated. See *Phillips' case*, Alcock's Registration Cases, 20, and *Duigenan's case*, Id. 114. See also Rogers on Election Law, and Elliott on Registration, where the cases bearing on this point are collected. See also Mr. Justice *Buller's* observation in *R.* v. *Eyles*, Cald. S. C. 414—"No lodger, though possessing the principal part of the house, was ever rated; but the owner, how small soever the part reserved for himself, is in the eyes of the law the tenant (occupier) of the whole, and is rated as the occupier."

Where A. entered into partnership by deed with B., who was the owner in fee of a house within the borough, in which house it was agreed that the business of bookselling should be jointly carried on by them, B. to require no rent for the part of the house in which the business was carried on, and the fixtures in those parts to be joint property; and A. and B. carried on business there accordingly, and were jointly rated for the house, A. residing elsewhere: the Court thought that A. was an occupier, and entitled to be a burgess. *Reg.* v. *Deighton*, Dav. & M. 682; 5 Q. B. 896.

To be an *inhabitant*, the party must *reside* within the borough, or within seven miles thereof. In *Rex* v. *Fryer and Others*, cited in *Rex* v. *Inhabitants of North Curry*, 4 B. & C. 961, Mr. Justice *Bayley* observed, "In a statute which mentions *inhabitant* as well as *occupier*, inhabitant must mean resident, otherwise it would mean the same as occupier."

Mere colourable residence is insufficient to constitute a party an inhabitant. See *Rex* v. *Duke of Richmond*, 6 T. R. 560. As to what is sufficient, see *R.* v. *Serjeant*, 5 T. R. 466;

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according to the provisions hereinafter contained, be a burgess of such borough and member of the body corporate of the mayor, aldermen, and burgesses of such borough: Provided always, that no such person shall be so enrolled in any year, unless he shall have been rated (3) in respect of such premises so occupied by him within the borough to all rates made for the relief of the poor of the parish

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Bruce v. *Bruce*, 2 Bos. & P. 229; *R.* v. *Mitchell*, 10 East, 511; *Whithorn*, App., *Thomas*, Resp., 7 Man. & G. 1; and Elliott on Registration, 204 (2nd ed.), and the cases there cited.

(3) No person is entitled to be "enrolled" (retained on the burgess list), unless he shall have been rated; but in consequence of the incomplete manner of making rates, and of the neglect of parties to ascertain whether they were rated before paying, many questions have arisen as to what is a sufficient rating; and the decisions as to actual and virtual rating have been numerous and conflicting. It seems now to be established, that, in order to constitute a good rating, the name of the party intended to be charged must appear on the rate. See *Moss*, App., *Overseers of Lichfield*, Resp., 7 Man. & G. 72. See also Lord *Mansfield's* reasons, in the judgment in *Rex* v. *St. Luke's Hospital*, 2 Burr. 1063; and the cases on this head collected in Elliott on Registration, 190 (2nd ed.). By 7 Will. 4 & 1 Vict. c. 78, s. 9, post, a rating in the name of a former occupier is sufficient in case of a title acquired by descent, devise, &c. See s. 12 of this Act.

In a case from Bristol arising under this Act (*R.* v. *Fripp*, M. T. 1836, Glover on Corporations, 693), the point was raised before the Court of Queen's Bench, whether the managing director of a company, who transacted the business of the company on premises for which "*the company*" was rated, was entitled to be placed on the burgess list under this Act; but the Court declined to decide on motion the question of the sufficiency of such rating or occupation.

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wherein such premises are situated during the time of his occupation as aforesaid, and unless he shall have paid (4) on or before the last day of August as aforesaid all such rates (5), including therein all borough rates, if any, directed to be paid under the provisions of this Act, as shall have become payable by him in respect of the said premises, except such

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(4) Payment of rates, to entitle a person to be put upon the burgess list of a borough under this section, must be a payment by the party's own act. Payment by another person acting as a *volunteer*, and without any authority from the person liable, is not sufficient. *Reg.* v. *Mayor &c. of Bridgnorth*, 10 A. & E. 66. But a payment by the landlord in consequence of an arrangement between him and his tenant, who was to pay an additional rent in respect thereof, has been considered a sufficient payment by the tenant under the Reform Act. See *Wright*, App., *Town-clerk of Stockport*, Resp., 5 Man. & G. 33; *Hughes*, App., *Overseers of Chatham*, Resp., Id. 54; *Cook*, App., *Luckett*, Resp., 2 C. B. 171. The decisions on settlement cases accord with this view. See *R.* v. *Bridgwater*, 3 T. R. 550; *R.* v. *Axmouth*, 8 East, 383; *R.* v. *Okehampton*, Burr. S. C. 5.

(5) It was held, in *Reg.* v. *Mayor &c. of Lichfield*, 2 Q. B. 693; 2 G. & D. 10, that a party was not disqualified in consequence of not having paid a *watch-rate* made under the provisions of a local Act, which, under section 92 of this Act, the town-council had the power to enforce: the provision in this section being held to apply only to poor-rates and "the borough rate," in the nature of a county-rate, made and directed to be paid under the 92nd section.

The non-payment of an *illegal* rate does not disqualify the party, though he have not appealed against it. *Reg.* v. *Mayor &c. of New Windsor*, 7 Q. B. 908.

See, as to the payment of *compositions* for poor-rate under local Acts, *Reg.* v. *Mayor &c. of Kidderminster*, 20 Law J., Q. B., 281.

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as shall become payable within six calendar months next before the said last day of August: Provided also, that the premises in respect of the occupation of which any person shall have been so rated need not be the same premises or in the same parish, but may be different premises in the same parish or in different parishes: Provided also, that no person being an alien shall be so enrolled in any year, and that no person shall be so enrolled (6) in any year who within twelve calendar months next before the said last day in August shall have received parochial relief or other alms (7), or any pension or

Aliens and persons who have received parochial relief not to be enrolled.

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(6) This word must be read here as meaning "inserted or retained in the burgess lists;" the act of *enrolling* strictly being a mere ministrial act on the part of the town-clerk, under section 22. See also section 45 (and note), where the word "enrolled" is again used, evidently not in its strictly proper sense.

(7) In the acts and resolutions of the House of Commons relating to the parliamentary franchise, the words "*other alms*" have been generally considered something wholly different and distinct from "*parochial relief;*" further distinctions have been also taken between "alms" and "charity."

In the *Taunton case*, however (1 Doug. El. Cases, 370), where it was resolved that the receipt "of alms or charity" disqualified, the word alms was held to mean parochial relief. But many of the distinctions taken in parliamentary cases may be now laid aside, as the Court of Queen's Bench have held, in the case of *Reg.* v. *Mayor &c. of Lichfield*, 2 G. & D. 10; 2 Q. B. 693, that the receipt of weekly alms from a charity fund not under the control of the overseers or the charitable trustees under this Act, was not a disqualification within the words of this section, and that the word *parochial* must be read as applying to "*relief*" and also to "*alms.*"

What will be deemed "parochial" relief or alms, it is important therefore to consider.

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charitable allowance from any fund intrusted to the charitable trustees of such borough hereinafter men-

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In order to constitute "*parochial relief*," it seems to have been held that the fund out of which such relief is received must be one of a public nature, and administered by the overseers of the poor *as such*.

What were not "public parochial funds," within the meaning of 56 Geo. 3, c. 139, s. 11, was decided in the case of *Rex* v. *Inhabitants of Halesworth*, 3 B. & Ad. 717.

The facts of the above case, involving two decisions on two separate devises, were as follows:—

Lands were devised for the relief of the poor of H., one half of the revenue to be employed for the relief of widows, the other half towards binding out apprentices. The rents were received by the churchwardens, and not mixed with the poor's rates, but kept in a distinct account. A parishioner of H., not receiving parish relief, applied to the churchwardens to provide him with means of apprenticing his son. The son was apprenticed, and the churchwardens paid the premium, costs of indenture, and expense of clothing the apprentice, out of the charity fund. *Held*, that this was not an indenture by which an expense was incurred by "*public parochial funds*," within 56 Geo. 3, c. 139, s. 11, and therefore not void for want of the approval of two justices according to that statute.

And in a similar case, where lands were devised to the churchwardens and overseers of L., and their successors, upon trust to apply the rents towards educating twenty poor children, and a part thereof yearly towards apprenticing eight of such children, to be chosen out and allowed by the said churchwardens and overseers, and the principal inhabitants: *Held*, that this also was not a "*public parochial fund*" within the meaning of the Act.

In delivering judgment in the above case, Lord *Tenterden* observed—"In one sense, according to some decisions, the funds in both these cases are funds of public charities, because the bequest is general, and does not designate the individuals to be benefited. In another sense, they are parochial also,

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tioned: Provided, that in every case provided in this Act, the distance of seven miles shall be com-

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because they are left for the benefit of persons belonging to the respective parishes. Still the question is, in each case, whether the money be that of a "public parochial fund" within the meaning of the statute 56 Geo. 3, c. 39, s. 11. * * * *. The funds in question cannot be properly so [*i. e.* public parochial] called in respect of the purpose for which they are collected, or the manner in which they are raised, *since they are not contributed by the inhabitants of the parish.* I think a public parochial fund must be one so contributed, or which is applicable to the general purposes of the relief of the poor. Estates devised for the relief of the poor *generally* would come under this description; but in each of these cases there is a fund left by the bounty of an individual for a certain specified purpose, that is, for the benefit of a particular class of persons. It is not meant to go in relief of the general parish fund, or, if so, only to a moderate extent. It does not appear that the intention was to relieve persons actually burdensome to the parish; there might be persons unable to bind out their own children, and therefore objects of this charity, who yet did not require parochial support; and in such cases the fund would be no relief to the parish."

The enactments of this section, it will be seen, as to "parochial relief or other alms," are positive and without any exception; the receipt, therefore, of such relief, at any time within the limited period of twelve months before the last day of August in any year, is an absolute disqualification.

Without going through the numerous cases collected in the various works on election law, it will be sufficient here to observe, that relief of every kind given by the parish to the voter himself, or to any member of his family whom by law he is bound to maintain, will cause a disqualification.

Within the above words, therefore, is included relief afforded by employing a voter or his children as parish labourers, at wages lower than other labourers receive. *Bedford case*, P. & K. El. Cases, 128 & 130; C. & R. El. Cases, 75.

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puted by the nearest public road or way by land or water (8).

Also medical relief. *Colchester case*, 1 Peck. 508.

Receiving medicine and attendance during the cholera. *Bedford case*, P. & K. 130; C. & R. 80.

The being sent to a lunatic asylum at the parish expense, *S. C.*, P. & K. 129.

But in the *Cricklade case*, 2 Lud. 356, 364, and in the *Cirencester case*, 2 Fraser, 453, where, in order to prevent the spread of the small-pox, persons had been inoculated, or had gone into the hospital or pest house, at the parish expense, it was held that such persons were not disqualified. A man, it has been said, ought not to lose his vote, because he had for the public good exposed himself to a disease. It would perhaps have been better, had medical relief in all cases of epidemic or dangerous diseases been excepted. The only exception, however, made by the Act is that of medical or surgical assistance given by the *charitable trustees* of any borough, which by the next section is not to be taken to be a disqualification. By the same section, also, the being taught at any public or endowed school is not a disqualification.

For the numerous cases which have been decided by parliamentary committees on this subject, see Elliott on Registration, and Rogers on Elections.

Under this section, it is submitted that a militia-man would be disqualified, if his wife or family, during his absence on service, were to receive parish relief. The Act 18 Geo. 3, c. 59, s. 25, which provides that relief given to the family of a militia-man in actual service shall be no disqualification, applies only to the *parliamentary* franchise.

(8) This provision of the Act has, it is believed, been found to work well in practice, and is in accordance with the decisions of the Courts of law in cases of agreement not to carry on particular trades within a given distance. *Wood* v. *Dennett*, 2 Stark. Rep. 89; *Leigh* v. *Hind*, 9 B. & C. 774; and see *Wing* v. *Earle*, Cro. Eliz. 267; and *S. C.*, Id. 212, reported as *Minge* v. *Earle*.

No point, it will be observed, is fixed by the statute, from

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Medical assistance or instruction in endowed schools not to be a cause of disqualification.

X. And be it enacted, that no medical or surgical assistance given by the charitable trustees of any borough shall be taken to be such charitable allowance as shall disqualify any person from being enrolled a burgess as aforesaid; nor shall any person be so disqualified by reason that any child of such person shall have been admitted and taught within any public or endowed school (1).

Occupiers may claim to be rated.

XI. And be it enacted, that in every borough it shall be lawful for any person occupying any house, warehouse, counting-house, or shop, to claim to be

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or to which the distance is to be reckoned. The nearest accessible point of the borough from the voter's house should, it is considered, be the spot from or to which the admeasurement ought to be made.

As to the mode of measuring the seven miles' distance under the Reform Act, a difference of opinion existed; the great majority of the revising barristers, it is believed, had ruled that the distance should be measured by the nearest way of public access: but this is now provided for by the stat. 6 & 7 Vict. c. 18, s. 76, which declares and enacts, that "the said distance shall be understood to be the distance of seven miles as measured in a straight line on the horizontal plane, from the point within any city or borough, &c. from which such distance is to be measured according to the directions in that behalf in the said Act (2 Will. 4, c. 45)." One of the Irish judges (*Foster*, B.) in *Dalby's case*, Alcock's Reg. Cases, 252, and also the Youghal Committee, F. & F. 395, had already decided in favour of the rectilinear measurement.

The inconvenience, however, of adopting, as regards the *same* borough, one mode of measurement for the parliamentary and another for the municipal franchise, must be too evident, it is considered, to require any remark.

(1) See note (7) to section 9, as to relief.

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rated (1) to the relief of the poor in respect of such premises, whether the landlord shall or shall not be liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming, and actually paying or tendering the full amount of the last-made rate then payable in respect of such pre-

(1) This claim may be made verbally or otherwise; but every occupier, upon his claiming, must at the same time tender the amount of the *last-made* rate then due in respect of his premises, by whomsoever originally payable. The overseers are required to put such party's name on *the rate for the time being;* if they do not, he is to be deemed to *have been rated* from the date of the making of such rate.

If a party shall have allowed two rates to be made without having made a claim, it will be seen that such omission cannot be remedied, as he can only claim with respect to the last-made rate; or in other words, for the rate in existence "for the time being." As to what is "the rate for the time being," see *Bushell,* App., *Luckett,* Resp., 2 C. B. 111.

In case of the overseers neglecting or refusing to place the claimant's name on the rate for the time being, it has been held in some of the revising courts, that a claimant need not make any further claim or tender, in the event of being omitted from a *subsequent* rate. But it is submitted, that there is nothing in the words of this section sufficient to justify such a conclusion, leading as it does to many inconvenient, if not absurd, consequences. Is such a neglected claim to supply the place of a rating and payment of rates for the then current year only, or for many years afterwards? The more reasonable interpretation is, that a party must make a fresh claim to be put upon every subsequent rate, from which he may have been either accidentally or intentionally omitted.

It would not, it is presumed, be contended, that a party who has been placed on the first rate according to his claim, but omitted from the next succeeding rate, is not obliged to claim *de novo,* whether omitted by the same or the succeeding overseers.

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mises, the overseers of the parish, in which such premises are situate, are hereby required to put the name of such occupier upon the rate for the time being; and in case such overseer shall neglect or refuse so to do such occupier shall nevertheless, for the purposes of this Act, be deemed to have been rated to the relief of the poor in respect of such premises from the period at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid: Provided always, that where by virtue of any Act of Parliament the landlord shall be liable to the payment of the rate for the relief of the poor in respect of any premises occupied by his tenant, nothing herein contained shall be deemed to vary or discharge the liability of such landlord; but in case the tenant who shall have been rated for such premises in consequence of any such claim as aforesaid shall make default in the payment of the poor's rate payable in respect thereof, such landlord shall be and remain liable for the payment thereof in the same manner as if he alone had been rated in respect of the premises so occupied by his tenant.

In case of titles by descent, &c., how the occupation is to be reckoned.

XII. And be it enacted, that where any house, warehouse, counting-house, or shop in any borough, shall come to any person by descent, marriage, marriage settlement, devise, or promotion to any benefice or office (1), such person shall be entitled to reckon the occupancy and rating, in respect of the occupancy thereof by the person from or by whom

(1) It will be seen that a title under letters of administration is not provided for in this enumeration, and consequently would not give any immediate title to be enrolled as a burgess.

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such house, warehouse, counting-house, or shop shall have so come to him, as his own occupancy and rating conjointly with the time during which he shall have since occupied and been rated for the same, and shall be entitled to be enrolled a burgess in respect of such successive occupancy and rating, provided he shall be otherwise qualified (2) as herein provided.

No new burgesses to be admitted who are not qualified under this Act

XIII. And be it enacted, that after the passing of this Act no person shall be enrolled a burgess of any borough, for the purpose of enjoying the rights conferred for the first time by this Act, in respect of any title other than by occupancy and payment of rates within such borough, according to the meaning and provisions of this Act (3).

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(2) The effect of these latter words was, in the great majority of cases, to neutralize the provision in the previous part of the section. It has been enacted, therefore, by 7 Will. 4 & 1 Vict. c. 78, s. 8, that in cases of descent, &c., mentioned in this 12th section, it shall not be necessary for the party claiming to be enrolled as a burgess, to prove that he was an inhabitant householder within the said borough, or within seven miles thereof, or that he was an occupier or rated within the same, before the title to such house or other property, coming so by descent, &c., as aforesaid, should have devolved upon him.

And by s. 9 of the same Act, it is also provided, that the rating in the name of the previous occupier shall be considered a sufficient rating of the person so entitled by descent, &c., until a new rate is made. The want of this enactment, also, had nearly reduced the provisions of s. 12 to a nullity; as it has been held that, unless the person coming in by descent, &c., had been *actually* rated from the very day of his coming into possession, he had not any vote.

(3) See ante, s. 9. As to reserved rights, see ss. 3, 4, 5, ante.

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Exclusive rights of trading abolished.

XIV. And whereas in divers cities, towns, and boroughs a certain custom hath prevailed, and certain bye-laws (1) have been made, that no person, not being free of a city, town, or borough, or of certain guilds, mysteries, or trading companies within the same, or some or one of them, shall keep any shop or place for putting to show or sale any or certain wares or merchandise by way of retail or otherwise, or use any or certain trades, occupations, mysteries, or handicrafts, for hire, gain, or sale within the same; Be it enacted, that notwithstanding any such custom or bye-law, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft, for hire, gain, sale, or otherwise, within any borough.

Overseers to make lists of all persons entitled to be burgesses in their respective parishes.

XV. And be it enacted, that on *the fifth day of September* in every year the overseers (2) of the poor of every parish wholly or in part within any borough shall make out (3) an alphabetical list, to be called

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(1) See note to s. 90.

(2) By s. 142, post, this word is to be construed to mean all persons who shall execute the duties of overseers of the poor. And see 16 & 17 Vict. c. 79, s. 14, post, by which it is enacted, that every matter which by this Act or any Act amending it is directed to be done by overseers, may be lawfully done by the major part of them; and also, that whenever any *notice* is by this Act, &c. required to be given to overseers, it may be delivered to any one of them, or left at his place of abode, or at his office for transacting parochial business.

(3) An overseer omitting (whether wilfully or through

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"The Burgess List," according to the form number 1 in the schedule (D.) to this Act annexed, of all persons who shall be entitled to be enrolled in the burgess roll of that year, according to the provisions of this Act, in respect of property within such parish; and the overseers shall sign (4) such burgess

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forgetfulness) to make out and sign the burgess list as required by this section, is liable to the penalty imposed by s. 48 of this Act. See *King* v. *Burrell*, 4 P. & D. 207; 12 A. & E. 460.

Semble, per *Patteson*, J., in that case (looking to the words of s. 48, which are, if "*any overseer*" neglects, "*every such overseer*" shall forfeit 50*l.*), that *all* the overseers must sign the list. See s. 48, note (1). It has since been decided, that where a parish was divided by a local Act into nine wards, for each of which there was a separate overseer appointed, who was also an overseer for the whole parish, all the lists of the nine districts or wards should be joined together for the purpose of making the parish list; which list must be signed by all the district overseers; and that, this not having been done, the defendant, one of the nine overseers, was liable to the penalty imposed by s. 48 of this Act. *King* v. *Share*, 3 Q. B. 31; 2 G. & D. 453; see also *Clarke* v. *Gant*, 8 Exch. 252. But see now 16 & 17 Vict. c. 79, s. 14, post.

(4) The delivery of a printed burgess list by an overseer, whose name is inserted in it as a burgess, and who has corrected the list in his own handwriting, is not a sufficient signing of such list by him within this section. *King* v. *Burrell*, 12 A. & E. 460; 4 P. & D. 207.

Where the overseer had neglected to make out any list, relief was afforded to a claimant under 7 Will. 4 & 1 Vict. c. 78, s. 24, which see post. *Reg.* v. *Mayor &c. of Lichfield*, 1 G. & D. 28; 1 Q. B. 453. So where the mayor had, notwithstanding the defect of the list in its not being signed by all the overseers, treated it as valid by expunging a name therefrom, that defect was held to be no answer to a *mandamus*

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lists, and shall deliver the same to the town-clerk of the borough (5) on the *said fifth day of September* in every year, and shall keep a true copy of such lists, to be perused by any person, without payment of any fee, at all reasonable hours between the fifth and fifteenth days of September in every year; and the town-clerk shall forthwith cause copies to be printed of all overseers' lists delivered to him, and shall deliver a copy of all such lists to any person requiring the same, on payment of a reasonable

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under the above section. *Reg.* v. *Mayor &c. of Dover*, 11 Q. B. 260.

(5) By this section, it will be seen, the overseers are to deliver their lists to the town-clerk on the 5th of September; who is forthwith to cause copies to be printed; and as early as the 8th of September, is to fix a copy of all such lists on the door of the town-hall.

In the larger boroughs, no small inconvenience has been experienced by the town-clerk in getting these lists properly printed in only two clear days. More time should have been allowed; especially as it has not unfrequently happened that the lists have not been sent in by the overseers till the 6th, or even the 8th. Under these circumstances the town-clerk has received the lists, and published them for the space of a week, though not on the days specified by this section. Whether such omission on the part of the overseers or of the town-clerk would invalidate the lists, has been questioned. The safer course, however, for the Court of Revision is, in all such or similar cases, to revise the lists tendered to them, leaving the determination of such a question to the Court of Queen's Bench. See the *Limerick case*, 1 P. & K. 366; Id. 460; and the *New Sarum case*, Id. 252, as to similar provisions being only *directory*. See also *Rex* v. *Mayor of Norwich*, 1 B. & Ad. 310.

See s. 48, as to the penalty on overseers, &c., neglecting to comply with the provisions of the Act.

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price for each copy; and shall cause a copy of all such lists to be fixed (6) on or near the outer door of the town-hall, or in some public and conspicuous situation within the borough, on every day during the week next preceding the fifteenth day of September in every year.

As to boroughs in which there is no town-clerk.

XVI. Provided always, and be it enacted, that in any borough in which there shall be no town-clerk, or in which the town-clerk shall be dead or incapable of acting, all matters by this Act required to be done by and with regard to the town-clerk shall be done by and with regard to the person executing duties in such borough similar to those of town-clerk; and if there be no such person, or if such person shall be dead or incapable of acting, then by and with regard to such fit person as the mayor of such borough shall appoint in that behalf: Provided always, that every precinct or place, whether extra-parochial or otherwise, which shall have no overseers, shall, for the purpose of making out such lists as aforesaid, be deemed within the parish adjoining thereto, such parish being wholly or in part situate within the same borough as such precinct or place; and if such precinct or place shall adjoin two or more parishes so situate as aforesaid, it shall be deemed to be within the least populous of such parishes according to the last census for the time being; and the overseers of the poor of

As to the precincts, &c., where there are no overseers.

(6) *Semble*, that the town clerk, though he is not responsible for such list remaining on the door during the whole day, must see that there is a perfect list on the door every morning of the week next preceding the 15th of September.

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every such parish shall insert in the list for their parish the names of all persons, who would have been entitled to be inserted in the lists for such precinct or place, if such precinct or place had had overseers, or been rated to the maintenance of the poor.

Persons omitted from the overseers' lists to give notice to the town-clerk.

XVII. And be it enacted, that every person whose name shall have been omitted in any such burgess list, and who shall claim to have his name inserted therein, shall, *on or before the fifteenth day of September* in every year, give notice thereof to the town-clerk in writing, according to the form number 2 in the said schedule (D.), or to the like effect (1); and every person whose name shall have been inserted in any burgess list for any borough may object to any other person as not being entitled to have his name retained in the burgess list (2) for the same borough; and every person so objecting shall, *on or before the fifteenth day of September* in every year, give to the town-clerk of such borough, and also give to the person objected to (3),

Notices as to persons not entitled to be retained in the lists.

(1) The notice must state the parish in which the property is situate, in respect of which the claim is made. *Reg.* v. *Mayor &c. of Kidderminster*, 2 L. M. & P. 201; 20 L. J., Q. B., 281. A signature with the *initials only* of the Christian names is sufficient. *Reg.* v. *Mayor &c. of Hartlepool*, 2 L. M. & P. 666; 21 L. J., Q. B., 71; *Reg.* v. *Avery*, Id. 428.

(2) This would perhaps have been more correctly expressed by the words "in any burgess list or lists." No particular list of any parish can strictly be termed "the burgess list for the borough."—See s. 28, note (3).

(3) A notice in these terms—"To Mr. J. B.—I hereby give you notice that I object to *your name* being retained," &c. was held sufficient. *Reg.* v. *Mayor &c. of Harwich*, 1 E. & B. 617.

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or leave at the premises for which he shall appear to be rated in the burgess list, notice thereof (4) in writing, according to the form number 3 in the said schedule (D.), or to the like effect; and every town-clerk shall include the names of all persons so claiming to be inserted on the burgess list in a list according to the form number 8 in the said schedule (D.), and shall include the names of all persons so objected to (5) as not entitled to be retained on

Lists of claimants, and of persons objected to, to be published, &c.

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(4) A notice of objection under this section, signed "A.B., King's Quay Street, Harwich," is not sufficient; for the Form No. 3, in Sched. D., requires the statement "of the place of abode, and also of the property for which the objector is said to be rated in the burgess list." *Reg.* v. *Mayor &c. of Harwich*, 8 A. & E. 919; 1 P. & D. 134. See also *Flight's case*, Bedford Committee, P. & K. 119; where it was held, that a notice of objection was invalid which did not contain the objector's place of abode, as required by the schedule to the Reform Act. It seems clear that a notice which wholly omits the place of abode, cannot be said to be "*to the like effect*;" but the Petersfield Committee, P. & K. 46, held a similar notice sufficient.

(5) If the objector has duly served his notice as required by this section, the omission on the part of the town-clerk to publish the list of persons so objected to will not, it is conceived, prevent the objector from calling on the person objected to prove his qualification. It will be observed, that there is a difference between the provisions of this section and the section of the Reform Act relating to notice of objections in boroughs. Under the Reform Act, the borough voter had no notice of objection beyond the list published by the overseer; this, however, was remedied by the 6 & 7 Vict. c. 18, s. 17, under which, as under this section, a notice is to be given to the party objected to. The proviso at the end of the next section refers only to the *notice*—not also to the publication of the lists by the town-clerk.

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the burgess list in a list according to the form number 5 in the said schedule (D.), and shall cause copies of such several lists to be fixed on or near the outer door of the town-hall, or in some public and conspicuous situation within such borough, during the eight days next preceding *the first day of October* in every year; and the town-clerk shall likewise keep a copy of the names of all persons so claiming as aforesaid, and also a copy of the names of all persons so objected to as aforesaid, to be perused by any person, without payment of any fee, at all reasonable hours during the eight days, Sunday excepted, next preceding the first day of October in every year, and shall deliver a copy of each of such lists to any person requiring the same, on payment of a sum not exceeding one shilling for each copy.

Copies of above lists to be kept for sale.

Mayor and assessors to revise lists,

XVIII. And be it enacted, that the mayor and the two assessors (1) hereinafter mention-

(1) *Semble*, that the court must be held before these three persons, who for this purpose may be looked upon *as one officer*, their power and authority being indivisible. The court cannot consequently be divided, or be held before one or two of them. There is here no such provision as that contained in the 35th section relative to voting papers, viz. "that the mayor and assessors, *or any two of them*," may act.

Where a corporation consists of two bailiffs and burgesses, the two bailiffs must concur in every corporate act, or such act is void; for if one bailiff could do a corporate act separately, this inconvenience would follow—they might act directly contrary to one another. "*The meaning and intent of the charter making two bailiffs was, that they should be both present, and concur in every corporate act.*" See 1 Kyd on

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ed(2), to be chosen in every year by the burgesses of every borough, shall hold an open court within such borough, for the purpose of revising the said burgess lists at some time between the first day of October inclusive and the fifteenth day of October inclusive

and, upon due proof, to insert and expunge names.

Corporations, 429; *Salter* v. *Grosvenor*, 8 Mod. 384; and see also *Rex* v. *Smart*, 4 Burr. 2241.—"The two bailiffs make but one officer;" both are necessary as presiding officers.

Before the passing of the 7 Will. 4 & 1 Vict. c. 78, great difficulty would have been experienced in case of the illness or unavoidable absence of either of the assessors, there being no power to name a deputy. But every assessor is now required, by s. 17 of 7 Will. 4 & 1 Vict. c. 78, as soon as conveniently may be after his election, to appoint a *deputy* to act for him, in case of illness or incapacity to act at any election or any revision of the burgess list.

By s. 3 of 7 Will. 4 & 1 Vict. c. 78, all elections had before the passing of that Act, or to be had under that Act, before the election of assessors, are declared to be as good as if had before the mayor and assessors jointly.

(2) By s. 37 it is provided, that in every borough two burgesses are to be elected, and "called the assessors of such borough." But s. 43 contains a provision, that, where a borough is divided into wards, two assessors should be elected for each ward, and that the assessors to hold the court for revising the lists with the mayor should be the *assessors of the mayor's ward;* it clearly not having been foreseen, that where the mayor was chosen from among the aldermen, there might be no mayor's ward. But by 7 Will. 4 & 1 Vict. c. 78, s. 4, this difficulty is obviated; it being provided, that in every borough divided into wards, two revising assessors should be chosen, in the same manner as the auditors are by s. 37 of this Act.

Semble, that the lists were void, where (previous to 7 Will. 4 & 1 Vict. c. 78) they had been revised by the mayor and the two assessors of the borough, elected under s. 37, instead of by the assessors of the mayor's ward, elected under s. 43. See *Rex* v. *Parry*, 6 A. & E. 810.

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in the year one thousand eight hundred and thirty-six, and every succeeding year, having first given three clear days notice of the holding of such court, to be fixed on or near the outer door of the town-hall, or in some public and conspicuous situation within the borough; and the town-clerk of every such borough shall, at the opening of the court, produce the said lists, and a copy of the lists of the persons claiming and of the persons objected to, so made out as aforesaid; and the overseers, vestry-clerks, and collectors of poor's rates of every parish wholly or in part within every such borough shall attend the court, and shall answer upon oath all such questions as the court may put to them or any of them touching any matter necessary for revising the burgess lists; and the mayor shall insert (3) in such lists the name of every person who shall be proved, to the satisfaction of the court, to be entitled to be inserted therein, according to the provisions of this Act; and shall retain on the said list* the names of all persons to whom no objection shall have been duly made; and shall also retain on the said lists the name of every person who shall have been objected to by any person, unless the party so

Town-clerk to produce lists, &c.

* "Lists."

(3) It seems that the mayor may make a list for the purpose of inserting the names of *claimants*, in cases where the overseers have neglected to make out any such list for the particular parish. (See post, 7 Will. 4 & 1 Vict. c. 78, s. 24.) *Reg.* v. *Mayor &c. of Lichfield*, 1 G. & D. 28; 1 Q. B. 453.

Where the mayor and assessors have refused to revise a burgess list, as being defective and null, they are not bound to revise the list of claimants to be inserted in that burgess list. *In re Mayor &c. of Harwich*, 21 L. J., Q. B., 193.

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objecting shall appear by himself, or by some one on his behalf, in support of such objection; and where the name of any person inserted in any one of the said lists shall have been duly objected to, and the person objecting shall appear by himself, or by some one on his behalf, in support of such objection, the court shall require proof of the qualification of the person so objected to; and in case the qualification of such person shall not be proved to the satisfaction of the court, the mayor shall expunge the name of every such person from the said lists (4); and he shall also expunge from the said lists the name of every person who shall be proved to the court to be dead; and shall correct any mistake or supply any omission which shall be proved to the court to have been made in any of the said lists in respect

Mayor to correct mistakes, &c.

(4) The mayor's decisions as to expunging the name was under this section conclusive. See 5 A. & E. 832, *In the matter of the Mayor of Hythe.* But by the 7 Will. 4 & 1 Vict. c. 78, s. 24, application may now be made by persons whose names may have been expunged or whose claims have been rejected at the revision, for a *mandamus* to insert their names on the roll.

It might have been supposed that neither under this section nor under 7 Will. 4 & 1 Vict. c. 78, s. 24, which is confined to the cases of claims rejected or names expunged, would the Court of Queen's Bench allow any inquiry into the validity of votes which had not been brought under the cognisance of the mayor at the time of the revision. The evils of what has been termed "opening the register" under the Reform Act, appear to be great, and to neutralise much of the benefit derived from the present system of revision. See, however, in note to sect. 24 of 7 Will. 4 & 1 Vict. c. 78, *Reg.* v. *Mayor &c. of Harwich*, 8 A. & E. 919, 1 P. & D. 134, where it was held that a party applying for the *mandamus* must come prepared to prove his whole title.

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of the name or place of abode of any person who shall be included in any such list, or in respect of the local description of his property: Provided always, that no person's name shall be inserted by the mayor in any such list, or shall be expunged therefrom, except in the case of death, unless notice shall have been given as is hereinbefore required in each of the said cases.

Power to mayor &c. of adjourning, of administering oaths, &c.

XIX. And be it enacted, that every mayor holding any court under this Act for the revision of the said lists, shall have power to adjourn the same from time to time, so that no such adjourned court shall be held *after the fifteenth day of October* in any year, and shall have power to require any overseer or person having the custody of any book containing any rate made for the relief of the poor during that or any preceding year, in any parish wholly or in part within the borough, to produce the same (1) and allow the same to be inspected at any court to be held for revision of the burgess lists, and shall have power to administer an oath to the town-clerk and to the overseers, and to all persons claiming to be inserted in or making objection to the omission or insertion of any name in any of the said lists, and to all persons objected to in any of such lists, and to all persons claiming to have any mistake in any of such lists corrected, and to all witnesses who may be tendered or examined on either side; and

(1) Under this section, the mayor is empowered to require any overseer or person having the custody of any rate-book, &c., to produce the same; but it does not appear that any power is given to the mayor to *compel* such production.

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the mayor and assessors (2) shall, upon the hearing in open court, determine upon the validity of such claims and objections, and the mayor shall, in open court, write his initials against the names respectively struck out or inserted, and against any part of the said lists, in which any mistakes shall have been corrected, and shall sign his name to every page of the several lists so settled.

Mayor shall sign the lists in open court.

XX. [Barristers to be appointed to revise lists in the first year (3).]

XXI. And be it enacted, that every person authorised by law to make an affirmation (4) instead

Affirmation may be substituted for oath.

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(2) The mayor and assessors neglecting their duty in this respect, are, by s. 48, subjected to a penalty of 100*l.* See ante, p. 36, n. (1), as to all acting.

By s. 22, the lists, when signed as above, are to be delivered by the mayor to the town clerk, who is from them to make "*The Burgess Roll.*"

(3) This section related only to the year 1835.

(4) Further relief has been afforded to this class of persons by the statute 1 & 2 Vict. c. 5, extended by 1 & 2 Vict. c. 15; whereby all Quakers, Moravians, and Separatists, on accepting any office or place, trust or employment, in or relating to any municipal corporation, may make and subscribe the declaration contained in 1 & 2 Vict. c. 5, in lieu and in place of the declaration required by 9 Geo. 4, c. 17, and by s. 50 of 5 & 6 Will. 4, c. 76.

By 6 & 7 Will. 4, c. 104, s. 8, it is also provided, that *no person enabled by law to make an affirmation instead of taking an oath* shall be liable to any fine for non-acceptance of office in any borough, by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act, and to take upon himself the duties of such office See the note to this last-mentioned section, post.

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of taking an oath shall make such affirmation in every case in which by this Act an oath is required to be taken; and if any person taking any oath required by this Act, or making any affirmation instead of taking such oath, shall wilfully swear or affirm falsely, such person shall be deemed guilty of perjury, and shall be punished accordingly.

Revised borough lists to be kept by the town-clerk, and copied into books, with the names numbered.

XXII. And be it enacted, that the burgess lists so revised and signed as last aforesaid, shall be delivered by the mayor to the town-clerk of such borough, who shall keep the same, and shall cause the said burgess lists to be fairly and truly copied into one general alphabetical list in a book to be by him provided for that purpose, with every name therein numbered, beginning the numbers from the first name, and continuing them in a regular series to the last name, and shall cause such books to be completed on or before the twenty-second day of October in every year, and shall deliver such books, together with the lists, at the expiration of his office, to the person succeeding him in such office; and every such book in which the said burgess lists shall have been copied shall be the *Burgess Roll* (1) of the burgesses of such borough entitled to vote, after the passing of this Act, in the choice of the councillors, assessors, and auditors of such borough,

Such book to be the roll of burgesses entitled to vote.

(1) The burgess lists of the whole borough, when they have been revised and copied into one general alphabetical list by the town-clerk, form the "Burgess Roll." But where the borough is divided into wards, the "Burgess Roll" is to be made out by the town-clerk in alphabetical lists of the burgesses in each ward. See s. 45, post.

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as hereinafter mentioned*, at any election which may take place in such borough between *the first day of November* inclusive in the year wherein such burgess roll shall have been made and *the first day of November* in the succeeding year: Provided that no stamp duty shall be payable in respect of the admission, registry, or inrolment of any burgess, according to the provisions of this Act (2).

* See ss. 30—37.

No stamp duty on inrolment.

XXIII. And be it enacted, that the town-clerk of every borough shall cause to be written or printed copies of the burgess roll in every year, and shall deliver such copies to all persons applying for the same, on payment of a reasonable price for each copy; and the monies arising from the sale thereof, and of the overseers' lists, and of the lists of claims and objections as aforesaid, shall be paid over to the treasurer of such borough, and shall be applied by him in aid of the borough fund hereinafter mentioned*.

Copies of the burgess roll to be printed for sale.

* § 92.

XXIV. And be it enacted, that the said council of every borough shall take an account of the reasonable expenses incurred by the overseers of the poor in carrying into effect the several provisions of this Act so far as relates to the said lists, and shall order the treasurer of the said borough to pay the same out of the borough fund of the said borough.

Expenses of overseers, how to be defrayed.

XXV. And be it enacted, that in every borough shall be elected at the time and in the manner here-

Mayor, aldermen, and councillors

(2) See post, as to freemen, 1 & 2 Vict. c. 35.

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to be chosen in every borough, who together shall constitute the council of the borough.

inafter mentioned, one fit person (1), who shall be and be called "the Mayor" of such borough; and a certain number of fit persons, who shall be and be called "Aldermen" of such borough; and a certain number of other fit persons, who shall be and be called "the Councillors" of such borough; and such mayor, aldermen, and councillors for the time being shall be and be called "the Council" of such borough;

Number of councillors.

and the number of persons so to be elected councillors of such borough shall be the number of persons in that behalf mentioned in conjunction with the name of such borough in the schedules (A.) and (B.) to this Act annexed; and the number of persons so to be elected aldermen shall be one-third of the number of persons so to be elected councillors; and on the *ninth day of November* in this present year the councillors first to be elected under the provisions of this Act, and on the *ninth day of November* in the year one thousand eight hundred and thirty-eight, and in every third succeeding year, the council for the time being of every borough shall elect (2) from the councillors, or from the persons

(1) See s. 49.

(2) Where a certain number of persons is to be elected as an official body (as, for instance, aldermen under this section), and where no particular mode of election is prescribed by the statute, the proper mode is to put to the vote a list containing as many names as there are places to be filled up, every elector having the opportunity of proposing and having put to the vote a list of his own. *Reg.* v. *Brightwell*, 10 A. & E. 171; 2 P. & D. 413: see *Reg.* v. *Hedger*, 12 A. & E. 139.

But see now 7 Will. 4 & 1 Vict. c. 78, s. 14, and 16 & 17 Vict. c. 79, s. 13, prescribing the mode of electing aldermen.

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qualified to be councillors, the aldermen of such borough, or so many as shall be needed to supply the places of those who shall then go out of office according to the provisions hereinafter contained; and that upon the ninth day of November in the year one thousand eight hundred and thirty-eight, and in every third succeeding year, one half of the number appointed as aforesaid to be the whole number of the aldermen of every borough shall go out of office; and the councillors immediately after the first election (3) of aldermen shall appoint who shall be the aldermen who shall go out of office in the year one thousand eight hundred and thirty-eight,

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Where the mayor, under a mistaken belief that the day was not the proper one for the election of aldermen, declined to proceed with the election; and the majority of the committees, under the same mistake, abstained from voting; but the minority delivered voting papers for certain candidates named therein: this was held to be no election at all, and a *mandamus* issued to proceed to an election. *Reg.* v. *Mayor &c. of Bradford*, 2 L. M. & P. 35; 20 Law J., Q. B., 226.

(3) The provisions of this section have been construed strictly; for where the councillors of a borough did not, "*immediately after the first election of aldermen*," in 1835, appoint who should go out of office, in the year 1838, as required by this section, but delayed such appointment till the 29th of October, 1838, it was determined that such delay vitiated the election of the aldermen chosen to succeed the aldermen so appointed to go out of office. *Reg.* v. *Alderson*, 1 Q. B. 878; 1 G. & D. 429. But by 6 & 7 Vict. c. 89, s. 3, provision is made for this case, the council being empowered, at the quarterly meeting to be held on the 9th November next after the passing of that Act, to declare and appoint who should be the aldermen to go out of office on the 9th November 1844, and that the persons named should be the persons then to go out of office accordingly.

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and thereafter those who shall go out of office shall always be those who have been aldermen for the longest time without re-election: Provided always, that any aldermen so going out of office may be forthwith re-elected, if then qualified as herein provided: Provided also, that the aldermen so going out of office shall not be entitled to vote in the election of a new alderman (4).

Proviso; out-going aldermen may be re-elected.

Mayor and aldermen to continue to be members of the council during their offices.

XXVI. And be it enacted, that the mayor and aldermen shall, during their respective offices, continue to be members of the council of the borough, notwithstanding anything hereinafter contained (1)

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(4) The aldermen going out of office cannot vote for their successors; but they are still entitled to vote in the election of mayor, although the candidate for whom they vote be an alderman, and the party elected be an outgoing alderman. *Reg.* v. *Maddy*, 11 A. & E. 869, 886. See post, s. 69.

It may now be considered as settled, that the outgoing aldermen are entitled to vote in the election of the mayor, and to assist in the appointment of the sheriff, which last-named officer is directed by 6 & 7 Will. 4, c. 105, s. 5, to be appointed on the 9th of November, instead of on the 1st (as required by s. 61 of this Act), and "*immediately after the election of the mayor*," which, by s. 69 of this Act, is to be the first business transacted at the quarterly meeting on the 9th November.

In *Reg.* v. *Stanley*, 11 A. & E. 869, 886, it was held, that though an outgoing alderman elected mayor, and afterwards presiding at the election of aldermen, might at such election, under stat. 7 Will. 4 & 1 Vict. c. 78, s. 14, give a casting vote, yet he could not give an original vote; for the mayor's right to give such original vote under 5 & 6 Will. 4, c. 76, s. 69, is restricted by the last words of this 25th section, when such mayor is an outgoing alderman.

(1) See s. 31, post.

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as to councillors going out of office at the end of three years.

Future vacancies in the office of alderman, how to be filled up.

XXVII. And be it enacted, that whenever any extraordinary vacancy shall take place in the office of alderman of any borough, the council of such borough shall, within ten days after such vacancy shall occur, on a day to be fixed by the mayor for such purpose, elect some other fit person to fill such vacancy, either from the councillors or from the persons qualified to be councillors: and in case any councillor shall be elected to fill the office of alderman, then the vacancy which will thereby be occasioned in the council shall be filled up at the time and in the manner hereinafter directed (1); and every person so elected an alderman to fill an extraordinary vacancy shall hold such office until the time when the person in the room of whom he was chosen would regularly have gone out of office, and he shall then go out of office, but may be re-elected if then qualified as herein provided.

Who are not qualified to be chosen mayor or councillor.

XXVIII. And be it enacted, that no person being in holy orders, or being the regular minister of any dissenting congregation, shall be qualified to be elected or to be a councillor of any such borough or an alderman of any such borough, nor shall any person be qualified to be elected (2) or to be a

(1) See post, s. 47.

(2) An uncertificated bankrupt is not disqualified from *being elected* a councillor or alderman, although, by s. 52, should any person *while holding* the office of mayor, alder-

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councillor or an alderman of any such borough who shall not be entitled to be on the burgess list of such borough (3), nor unless he shall be seised or

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man, or councillor, be declared a bankrupt, &c., he would immediately be disqualified and cease to hold the office. *Rex* v. *Chitty*, 5 A. & E. 609.

Where a party has been elected a councillor, and during his term of office has been omitted from the burgess roll for alleged non-payment of rates, but notwithstanding has continued to exercise his office, the Court will not, on affidavit of these circumstances, issue a *mandamus* to proceed to a new election, the office being full *de facto:* a quo warranto information to ascertain the vacancy must be tried, before a new election can be had. *Reg.* v. *Phippen*, 7 A. & E. 966.

The alderman of the ward has no power, under the above circumstances, to inquire into the case, and decide whether a vacancy exists or not; his powers under s. 47, post, are limited to cases where the vacancy is fully established by judgment of ouster, or by resignation duly made and accepted by the corporation, or where it arises under the circumstances provided for by s. 52. *Reg.* v. *Phippen*, 7 A. & E. 966. See also *Rex* v. *Mayor &c., of Winchester*, 7 A. & E. 215; *Rex* v. *Mayor &c., of Oxford*, 6 A. & E. 340.

(3) In the former editions of this work, the following observations, by the original compiler, appeared:—

"Much difficulty has been experienced in ascertaining what is the proper meaning to be attached to these words. It has been contended by some, that, strictly speaking, there is no "burgess list of such borough," as, by s. 15, "the burgess list" is to be made by the overseers *for each parish*, (and there is no doubt that it is *the revised burgess lists* for each parish which constitute the *burgess roll* under s. 22): but it is contended by others, that "the burgess list of the borough" is the copy of all the parish lists published by the town-clerk, as directed by s. 15, previous to the revision: and in support of this view, they cite a similar expression in s. 17, and refer also to the four forms in schedule (D.) of the Act, relating to

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possessed of real or personal estate, or both, to the following amount, that is to say, in all boroughs

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claims and objections, in which "the Burgess List of the borough" is invariably mentioned.

"Assuming, then, that this latter view is correct, and that the term "the Burgess List" is correctly used, as great a difficulty still remains as to the words "entitled to be." If it had been intended that no person should be eligible as alderman or councillor, who was not upon the burgess list, such intention would have been easily expressed by the words "*who shall not be on.*" If it had meant only persons who should possess the qualification required by s. 9, the words might have been "*who shall be qualified,*" and this is the expression used in s. 30.

"Besides, it is very difficult to say who is "*entitled to be*" on the list, who is not upon it: for if left off by the overseer, the party (by s. 17 of this Act) is required to make a claim, and if such claim is rejected, application may be made under s. 24 of 7 Will. 4 & 1 Vict. c. 78, to the Court of Queen's Bench, to be placed upon "the Burgess Roll."

"In the case of *Reg.* v. *Harvey*, 3 Q. B. 475, 3 G. & D. 246, this subject came under the consideration of the Court of Queen's Bench. The question there was as to the validity of the election of the defendant to the office of alderman upon an extraordinary vacancy, under s. 27; and it was held that, to qualify him to be so elected, he must be upon the burgess roll which was in force for the current municipal year in which the election to such vacancy took place. It should be observed, however, that in that case the Court did not expressly decide any question upon the proper interpretation of the words "*entitled to be* on the burgess list," in s. 28, nor was any question raised by the affidavits as to the *qualification* of the party to be a burgess: the point in argument being only, *which* must be understood to be "the burgess list of such borough" within that section—the list in force from 1st November preceding to 1st November following the election (on which Mr. Harvey was not), or the list made out and completed, under s. 22, on the 22nd of October in that year, (on

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directed by this Act to be divided into four or more wards to the amount of one thousand pounds, or

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which he was), the election taking place on the 29th of October. The Court held, that the former was the burgess list of the borough meant in s. 28, inasmuch as the latter would not be in force until the 1st of November following."

Since these observations were written, the question to which they relate has received a judicial construction. In the first place it was held, on a *quo warranto* information for exercising the office of mayor, that it is no objection to the title that the party, who was a councillor when elected mayor, is not shewn to have been *on the burgess roll* at that time; it being admitted that he was *de facto* councillor when elected mayor, and that he was on the burgess roll when elected councillor. *Reg.* v. *Dixon*, 15 Q. B. 33. And in the subsequent case of *Whalley* v. *Bramwell*, 15 Q. B. 775, it was expressly decided, that a person who was shewn to possess the proper qualification, by occupation and payment of rates, to hold the office of councillor, was therefore, within the meaning of this section, *entitled to be* on the burgess list, and qualified to act as councillor, although his name had been expunged by the mayor and assessors from the burgess list, and it was therefore not upon the burgess roll; for that the decision of the mayor and assessors was not conclusive as to his right to be on the burgess list, within this section.

See s. 53, imposing penalties on persons acting as mayor, aldermen, &c., without being qualified.

In *Reg.* v. *Hiorns*, 7 A. & E. 960, the Court of Queen's Bench held, that *notice of a disqualification* rendering a person ineligible as a councillor ought to be given at the time of the election, and made a rule absolute for a *quo warranto* information against the party declared to be elected instead of the person disqualified. With respect to the correctness of the general rule established by a long series of decisions, both in the Courts of law and in parliamentary committees, there is no doubt. See Rogers on Elections (6th edition), 226, and the cases there cited.

But it is not yet decided whether *express notice* must in-

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be rated to the relief of the poor of such borough upon the annual value (4) of not less than thirty

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all cases be given; nor whether, in default of such notice being given, in a case where the party is disqualified, as under 7 Will. 4 & 1 Vict. c. 78, s. 15, by being an assessor, and it appears that the electors cannot have failed to have known of his being so, votes so given for him are thrown away. This point was raised in *Reg.* v. *Hiorns*, but was not decided. See also *Reg.* v. *Councillors of Derby*, 7 A. & E. 419.

A dictum of Lord *Mansfield*, that "*if the disqualification is notorious it elects the other party*," is to be found in *Rex* v. *Blissel*, Roe on Elections, 279; but this dictum is not in Dougl. Rep. 398, n. It is observed in Rogers on Elections, page 227, with reference to the argument that the notoriety of the disqualification of the candidates should be sufficient notice to the electors, "that the answer to it seems to be, that the disqualifications, though notoriously existing before the poll, may have been got rid of at and even after its opening." This would hardly be an answer in the case of a person who, originally elected assessor by the very same electors, was publicly acting as assessor during the election.

A difficulty also occurs, how *express notice* of ineligibility can be given at elections of councillors under this Act; as, under s. 32, there is no nomination or declaration of the candidates, but each voter delivers to the presiding officer a voting paper, containing the names, &c. of the persons for whom he votes, whose names may be wholly unknown to the other electors of the borough.

As to votes being *thrown away* after due notice of disqualification, see *Rex* v. *Hawkins*, 10 East, 211; affirmed in the House of Lords, 2 Dow, 124; *Reg.* v. *Coaks*, 3 E. & B. 249.

Notice of ineligibility may be given after the polling has commenced, but votes given before such notice are not thrown away; so that a candidate whose votes do not exceed such last-mentioned votes, cannot be returned as elected. *Rex* v. *Bridge*, 1 M. & Sel. 76; and the cases decided by election committees, Rogers (6th edition), 226.

See post, s. 32, n. (4), *Reg.* v. *Mayor of Leeds*, 7 A. & E. 963.

(4) "Annual value" here means the same as "rateable

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pounds, and in all boroughs directed to be divided into less than four wards, or which shall not be divided into wards, to the amount of five hundred pounds, or be rated to the relief of the poor in such borough upon the annual value (5) of not less than fifteen pounds, or during such time as he shall hold any office or place of profit (6), other than that of mayor, in the gift or disposal of the council of such borough, or during such time as he shall have directly or indirectly, by himself or his partner (7), any share or interest in any contract or employ-

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value," in the form of rate prescribed by the Parochial Assessments Act, 6 & 7 Will. 4, c. 96. *Baker* v. *Marsh*, 4 E. & B. 144.

(5) See note (4) supra.

(6) Under these words, not only are the holders of corporate offices disqualified, but also the holders of *places of profit* in the gift of the council. Therefore, the town-clerk (s. 58), the treasurer (s. 58), the registrar of the Court of Record, &c. (s. 119), being all appointed by the council, are disqualified. So also, was the sheriff (s. 61), till the passing of the 5 & 6 Vict. c. 104, s. 8, which declares the office of sheriff not to be an office of profit, so as to create a disqualification.

But it would seem there is nothing here to prevent the *partner* of the town clerk, or of the clerk of the peace, &c. from being a councillor: see s. 102.

A clerk to the justices, holding neither a corporate office nor a place of profit under the council, *may be* elected a councillor; but, in such event, the justices, under s. 102, must discharge him; as that section provides, that it shall not be lawful for the justices to appoint or *continue* as clerk to the justices any alderman or councillor of the borough.

(7) A lease granted by the corporation to a *trustee* for a councillor was held a disqualification. *Simpson* v. *Ready*, 12 M. & W. 736.

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ment (8) with, by, or on behalf of such council: Provided that no person shall be disqualified from

(8) The object of this clause clearly was to prevent all dealings on the part of the council with any of its own members in their private capacity; in other words, to prevent a member of the council, standing in the situation of a trustee for the public, from taking any share or profit out of the trust fund, or in any contract or employment, in the making or regulating of which, he, as one of the council, ought to exercise a superintendence.

The evil contemplated being evident, and the words used general, they will be construed to extend to all cases which come within the mischief intended to be guarded against, and which can fairly be brought within the above words. Upon this principle, a person who had entered into an existing contract for profit with the council was held to be disqualified, even though, by reason of its not being under seal, he could not have sued the corporation on the contract. *Reg.* v. *Francis*, 21 L. J., Q. B., 304.

The word "*contract*," if the above view be correct, would extend to all cases of supplies of goods for the use of the borough, the gaol, &c., when ordered by the council; and this, though the order be a single one of small or large amount, or relate to the supply for a year, or for a longer or shorter period.

Such appeared to be the opinion of the Court of Queen's Bench, in the case of *Reg.* v. *York*, 2 Q. B. 847; 2 G. & D. 105. The point raised in that case was, whether a *lease* granted by the corporation was a "*contract*" within the meaning of the above words. The Court expressed a decided opinion that it was, but took time to consider whether the particular lease, having been granted by the old corporation, could be said to constitute a contract with the *council* under the Act. Their judgment was afterwards delivered, deciding that it was a contract with the council. (See also *Simpson* v. *Ready*, 12 M. & W. 736).

So great, however, it was considered, would be the inconvenience arising out of the above decision, that it led to the passing of the stat. 5 & 6 Vict. c. 104, by which, after recit-

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being a councillor or alderman of any borough as aforesaid by reason of his being a proprietor or

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ing "that whereas doubts have arisen as to the extent and meaning of the word 'contract,' used in the above section," it is enacted, "that the word 'contract' shall not extend or be construed to extend to any lease, sale, or purchase of any lands, tenements, or hereditaments, or to any agreement for any such lease, sale, or purchase, or for the loan of money, or to any security for the payment of money only." As to what is a "security for the payment of money only," within this section, see *Le Feuvre* v. *Lankester*, 3 E. & B. 530. This enactment had not a retrospective operation on cases where actions had been commenced before its passing (10th August, 1842). *Simpson* v. *Ready*, 11 M. & W. 344. But see ss. 3 & 4, providing for the discontinuance of such actions on certain terms.

See also stat. 15 & 16 Vict. c. 5, post, by which proprietors of *newspapers* in which advertisements relating to the affairs of a borough or of the council are not to be thereby deemed to have an interest in a contract or employment within this section, and are exempted from the disqualification herein contained.

Quære, whether a contract with the town council in its capacity as local board of health, so constituted by a provisional order made under the Public Health Act, 11 & 12 Vict. c. 63, is within this section. *Le Feuvre* v. *Lankester*, 3 E. & B. 530.

L., an alderman of a borough, sold iron to a person who had contracted to supply the town council, as local board of health, with iron railings, and who bought the iron for the purpose of performing his contract:—*Held*, that this was not an interest in a contract within this section, and that L. was not liable to any penalty under s. 53. *Ib.*

Similar provisions to those contained in the above section are to be found in previous statutes; viz. in the statutes relating to workhouses, turnpike trusts, &c. Some of the decisions on them may be usefully referred to, while considering the interpretation to be put upon the present enactment.

Turnpike trustees.

By the General Turnpike Act, 3 Geo. 4, c. 126, s. 65, it is provided, "that no trustee of any turnpike road shall have

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shareholder of any company, which shall contract with the council of such borough for lighting or

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any share or interest in, or be in any manner directly or indirectly concerned in, any contract or bargain for making or repairing, or in any way relating to the road for which he shall act; nor shall any such trustee let out for hire any waggon, wain, cart, &c., or any horse, &c., for the use of any turnpike road *for which he shall act as a trustee;* nor by himself, or by any other person for or on his own account, directly or indirectly receive any sum or sums of money to his use or benefit, out of the tolls collected on the road for which he shall act, during the time he shall be acting as a trustee of such road; and that every trustee so offending shall for every such offence forfeit 100*l.*" A. had contracted with the trustees of a turnpike-road to execute certain improvements on the road, and to perform work at a specified sum: afterwards B., one of the trustees, agreed with A. (the contractor) to let him his horse and cart, at the rate of 5*s.* a day, and did so let them, to do the work on the road:—It was held that A. was liable to the penalty imposed by the above section. *Towsey* v. *White*, 5 B. & C. 125.

As to guardians and overseers of the poor supplying the poor, contrary to the provisions of 55 Geo. 3, c. 137, s. 6, see *West* v. *Andrews*, 5 B. & Ald. 328; and *S. C.* further reported, 1 B. & C. 77. In that case, J. S., who had been appointed master of the workhouse by the guardians, and who also under a contract supplied the meat, &c. to the workhouse, purchased of A. B., one of the guardians, four sheep for the use of the poor:—It was held, that A. B. was liable to the penalty of 100*l.* imposed by 55 Geo. 3, c. 137, s. 6, which prohibits overseers, &c., from supplying "for his or their own profit, any goods, materials, or provisions, for the use of any workhouse or workhouses, or otherwise for the support and maintenance of the poor;" and from being "concerned directly or indirectly in furnishing or supplying the same, or in any contract or contracts relating thereto." 55 Geo. 3, c. 137, s. 6.

In *Procter* v. *Mainwaring*, 3 B. & Ald. 145, and *Henderson* v. *Sherborne*, 2 M. & W. 236, it was held that a supply of goods to an *individual pauper* is not within the section. But in the latter case, the Court of Exchequer appeared to

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supplying with water or insuring against fire any part of such borough.

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consider themselves bound by the authority of *Procter* v. *Mainwaring* (a case decided without argument on the motion for a rule nisi); Mr. Baron *Parke* observing, "if I had to form an opinion on the facts of that case for the first time, I am not prepared to say that I should have quite assented to the reason assigned by the Court for their judgment."

See *Pope* v. *Backhouse*, 8 Taunt. 239, 2 Moore, 186, where a supply to *some* paupers was held within the section.

In *Barber* v. *Waite*, 1 A. & E. 514, it was held, that this section did not extend to a person doing work as a plumber and glazier on the workhouse, and supplying, incidentally for such work, paint, glass, and lead. The Court, in giving their judgment, appeared to consider that such employment came within the mischief intended to be guarded against, but that the words used would not include such a case.

In the case of *Charlesworth* v. *Rudgard*, 1 C. M. & R. 498, where, by a local paving and lighting Act, a penalty was imposed upon any commissioner *acting as such* in any matter in which he might be personally interested; one of the commissioners, being personally interested in a footpath, attended a meeting of the commissioners, and spoke upon the mode of constructing such footpath:—*Held*, that this was sufficient evidence to go to the jury of his *acting* as a commissioner.

The words of the present statute are, as above observed, general; and from the terms of the proviso, the word 'contract' appears to be used in an extended sense. It is submitted, therefore, that any selling to, dealing with, or working for the council in their corporate capacity, especially if payment is to be made out of the borough fund, will come within the scope of the above words; for though it is true that a penal statute is to be construed strictly, yet it is an equally acknowledged principle, that a remedial statute should be so construed as to embrace all cases coming within the mischief intended to be remedied.

See 7 Will. 4 & 1 Vict. c. 78, s. 39, enacting that no mayor, councillor, &c., is to be interested in any contract, &c., for building, enlarging, or repairing any borough gaol.

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XXIX. And be it enacted, that every burgess of any borough who shall be enrolled on the burgess roll for the time being of such borough shall be entitled to vote in the election of councillors and of the auditors and assessors hereinafter mentioned for such borough, and no person who shall not be enrolled in such burgess roll for the time being shall have any voice or be entitled to vote in any such election. Who shall vote in the election for councillors.

XXX. And be it enacted, that upon the first day of November in every year the burgesses so enrolled in every borough shall openly assemble and elect from the persons qualified to be councillors (1) the councillors of such borough, or such part of them as shall be needed to supply the places of those who shall then go out of office: Provided Councillors to be chosen on the 1st Nov. in every year. Proviso as to Sunday.

(1) On the trial of a quo warranto information for exercising the office of councillor for a ward having nine (the issue being whether the defendant was duly elected), the prosecutor's case was, that nine other candidates at the election had a majority over the defendant:—*Held*, that the prosecutor was not bound to prove, in the first instance, that the nine were *qualified* to be councillors; but might make a case by shewing simply that they had the actual majority of votes. *Reg.* v. *Ledgard*, 8 A. & E. 535.

The proper construction of these words is, that the election is to be from persons *not disqualified* (see s. 28); votes, however, given in favour of a candidate not qualified, would not, at all events without notice, be throwu away. *Reg.* v. *Ledgard*, 8 A. & E. 538; see ante, *Reg.* v. *Hiorns*, in note to s. 28, p. 50.

The duty of the returning officer being purely *ministerial*, he is to assume the persons voted for to be qualified. *Reg.* v. *Ledgard*, 8 A. & E. 545.

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nevertheless, that whenever any day by this Act appointed for any purpose shall in any year happen on a Sunday, in every such case the business so appointed to be done shall take place on the Monday following.

One third part of the council to go out of office annually.

XXXI. And be it enacted, that upon the first day of November one thousand eight hundred and thirty-six, and in every succeeding year, one-third part of the number appointed as aforesaid to be the whole number of the councillors of every borough shall go out of office (1); and in the said year one thousand eight hundred and thirty-six those who shall go out of office shall be the councillors who were elected under the provisions of this Act by the smallest numbers of votes in this present year, and in the next year, one thousand eight hundred and thirty-seven, those who shall so go out of office shall be the councillors who were elected under the provisions of this Act by the next smallest numbers of votes in this present year, the majority of the whole council (2) always determining, when the

(1) This provision is not to affect the mayor and aldermen. See ante, s. 26.

(2) Under these words, it is suggested, it would not be sufficient that the majority of the *members present* should determine, &c. The words used are "the majority of the *whole council*," which, by s. 25, is to consist of the mayor, aldermen, and councillors, the numbers of whom are defined by the schedules to this Act. Though it is clear that, in the absence of any special provision to the contrary, the corporate body are bound by the acts, not only of the major part of them, but of the major part of those who are present at a regularly convened corporate meeting; yet where the corpo-

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votes for any such persons shall have been equal, who shall be the persons so to go out of office (3); and thereafter those who shall so go out of office shall always be the councillors who have been for the longest time in office without re-election: Pro-

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rate body consists of a *definite number*, and it is provided that an act shall be done by the body for the time being, or the major part of them, it has been held that *a majority of the whole* must meet for the purpose; and if the body be so reduced as that a majority of the whole definite number no longer remains, the act cannot be done. See *Rex* v. *Bellringer*, 4 T. R. 810, and the cases there cited. See also *Rex* v. *Miller*, 6 T. R. 268, in which case it was held, that where an integral part of a corporation, composed of a *definite number*, is required to vote at an election of a corporate officer, a majority of such integral definite part must attend, otherwise there can be no elective assembly, although other parts of the corporation also join in such election, and a majority of the whole existing body actually attend. But a majority of those present, *when legally assembled*, will bind the rest. See *Rex* v. *Monday*, Cowper, 538; *Rex* v. *Devonshire*, 1 B. & C. 609; *Rex* v. *Bower*, Id. 492; and *Rex* v. *May*, 4 B. & Ad. 843; see also *Rex* v. *Greet*, 8 B. & C. 363; *Rex* v. *Headley*, 7 B. & C. 496. These authorities establish, that, if a particular constitution or statute require *the presence* of a majority of the whole number, the *consent and concurrence* of such majority is not necessary; it will be sufficient if a majority of the number *present* concur: and even if the majority present dissent from an election, but do not vote for any other person, the election by the *minority* is good. See also *Cotton* v. *Davis*, 1 Str. 53; *Oldknow* v. *Wainwright*, 2 Burr. 1019; 1 W. Bl. 229.

As a general rule, it is provided by s. 69 of this Act, that all acts of the council are to be decided by a majority of the members present at any meeting, provided the whole number present be not less than one-third part of the whole council.

(3) See 7 Will. 4 & 1 Vict. c. 78, s. 10, post.

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Proviso for re-elections.

vided always, that any councillor so going out of office shall be capable of being forthwith re-elected, if then qualified, as herein provided.

Elections to be held before mayor and assessors.

XXXII. And be it enacted, that every election of councillors within any borough according to the provisions of this Act shall be held before the mayor and assessors (1) for the time being of such borough, except as herein is excepted (2); and the voting at every such election shall commence at nine o'clock in the forenoon, and shall finally close (3) at four o'clock in the afternoon of the same day, and shall be conducted in manner following; that is to say, every burgess entitled to vote in the election of councillors may vote for any number of persons not exceeding (4) the number of

Mode of voting.

(1) The 36th section of this Act provides for the case of the death or absence of the mayor at any election; see note to that section, and also s. 49, post. And by 7 Will. 4 & 1 Vict. c. 7, s. 17, post, every assessor, as soon as conveniently may be after his election, is required to appoint a deputy to act for him in case of illness, or any incapacity to act, at any election, &c.

(2) See s. 43, which provides that where the borough is divided into wards, the election for each ward shall be held before an alderman to be appointed for that purpose, and the two assessors of the ward.

(3) By s. 18 of 7 Will. 4 & 1 Vict. c. 78, the poll may be closed at any time before four o'clock, if one hour shall have elapsed without a vote having been tendered.

(4) See *Reg.* v. *Mayor &c. of Leeds*, 7 A. & E. 963, where it was held, that where only one vacancy had been duly declared, the votes given for *two persons jointly* were thrown away; and that a candidate who had obtained the single vote,

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councillors then to be chosen, by delivering to the mayor and assessors or other presiding officer as hereinafter mentioned* a voting paper containing the christian names and surnames of the persons for whom he votes, with their respective places of abode (5) and descriptions, such paper being previously signed with the name of the burgess voting, and with the name of the street, lane, or other place (6), in which the property for which he appears to be rated on the burgess roll is situated.

* § 33.

Polling booths to be provided.

XXXIII. And be it enacted, that at every election in any borough the mayor, if it shall appear to him expedient for taking the poll at such election, may cause booths to be erected, or rooms to

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i. e. whose voting papers contained the name of *one candidate only*, was duly elected. See ante, p. 51, as to votes being thrown away.

Where an election has in fact been held (although by an erroneous construction of the Act) for one councillor only instead of two, the candidate who was second on the poll cannot have a *mandamus* to admit him to the office; his remedy is either by *mandamus* to hold a new election for a second councillor, or (if the office have been filled in the meantime) by a *quo warranto*. *Reg.* v. *Royle*, H. T. 1855.

See *Reg.* v. *Rowley*, 3 Q. B. 143, fully cited in note to s. 11 of 7 Will. 4 & 1 Vict. c. 78, post, as to the necessity, at an election of councillors, of making a distinction between the ordinary and extraordinary vacancies. See also s. 47 of this Act.

(5) That is, their places of *residence*, not of *business*. *Reg.* v. *Deighton*, 5 Q. B. 896, Dav. & M. 682; *Reg.* v. *Hammond*, 17 Q. B. 772. See *Reg.* v. *Coward*, 16 Q. B. 819, and *Reg.* v. *Gregory*, 1 E. & B. 600, in note on s. 142, post.

(6) See *Reg.* v. *Avery*, 21 L. J., Q. B., 428.

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be hired and used as such booths, for different parts of such borough, which may be situated either in one place or in several places, and shall be so divided and allotted into compartments as to the mayor shall seem most convenient; and the mayor shall appoint a clerk to take the poll at each compartment, and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the parts for which such booth is respectively allotted; and no person shall be admitted to vote at any such election except at the booth allotted for the part wherein the house, warehouse, counting-house, or shop occupied by him as described in the burgess roll may be; but in case no booth shall happen to be provided for any particular part as aforesaid, the votes of the persons voting in respect of property situate in any part so omitted may be taken at any of the said booths; and public notice of the situation, division, and allotments of the different booths shall be given two days before the commencement of the poll by the mayor; and in case the booths shall be situated in different places the mayor may appoint a deputy to preside at each place: Provided also, that no election shall be holden under this Act in any borough in any church, chapel, or other place of public worship.

Mayor to appoint poll clerks.

Notice of the situations, &c.

No inquiry of the voter except as to his identity, and whether he has voted before at the same election.

XXXIV. And be it enacted, that no inquiry shall be permitted at any election as to the right of any person to vote as a burgess in any borough, except only as follows; (that is to say), that the mayor or other presiding officer shall, if required by any two burgesses entitled to vote in the same

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borough, put to any voter at the time of his delivering in his voting paper, and not afterwards, the following questions, or any of them, and no other (1):—

Forms of questions as to these points.

1. Are you the person whose name is signed as *A. B.* to the voting paper now delivered in by you?
2. Are you the person whose name appears as *A. B.* on the burgess roll now in force for this borough, being registered therein as rated for property described to be situated in ——? [*Here specify the street, &c., as described in the burgess roll.*]
3. Have you already voted at the present election?

And no person required to answer any of the said questions shall be permitted or qualified to vote until he shall have answered the same; and if any person shall wilfully make a false answer to any of the questions aforesaid he shall be deemed

Person answering falsely, guilty of a misdemeanor.

(1) No question can be put as to change of qualification, as was the case under the Reform Act, until 6 & 7 Vict. c. 18. A burgess, therefore, once properly enrolled is enabled to vote as long as the burgess-roll on which his name appears is in force (viz. one year, see s. 22.)

Neither the mayor nor other presiding officer has any right to put to the voter any other questions than the above. The Court, however, refused to grant a criminal information against an assessor, who had questioned the voter as to having signed another paper in favour of the other side; it not being conclusively shewn that the party had been actuated by corrupt motives. The rule was, however, only discharged on the defendant's paying all the costs. *Rex* v. *Chapman*, T. T., 1837.

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guilty of a misdemeanor (2), and may be indicted and punished accordingly.

Result of election, how to be declared.

XXXV. And be it enacted, that the mayor and assessors shall examine the voting papers so delivered as aforesaid, for the purpose of ascertaining (1) which of the several persons voted for are elected; and so many of such persons, being equal to the number of persons then to be chosen, as shall have the greatest number of votes, shall be deemed to be elected; and in case of an equality in the number of votes for any two or more persons, the mayor and assessors, or any two of them, shall name from amongst those persons for whom the number of votes shall be equal so many as shall be necessary to complete the requisite number of per-

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(2) See *Reg.* v. *Dodsworth*, 2 Moo. & R. 72, and 8 Car. & P. 218, where the form of indictment is given. See also *R.* v. *Marsh*, 6 A. & E. 250; *Reg.* v. *Ellis*, Car. & M. 564; *Reg.* v. *Spalding*, Id. 565. In *Reg.* v. *Thompson*, 2 Moo. & R. 355, it was held, on the trial of an indictment for personating a burgess at an election of a councillor for a ward, that it was sufficient for the prosecutor to shew that the personation took place at what purported to be a ward election, and was not necessary to prove a due division of the borough into wards, and the approval thereof by the Privy Council.

(1) The duty of a returning officer is purely *ministerial*. In *Reg.* v. *Ledgard*, 8 A. & E. 545, Mr. Justice *Patteson* observed—"The Act studiously makes the returning officer *ministerial*, for the purposes of summing up the votes, and declaring the party who has the greatest number to be elected. It is no business of his whether the candidate be qualified or not. I do not know that he would be bound to notice his not being on the burgess roll."

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sons to be chosen: and the mayor shall cause the voting papers (2) to be kept in the office of the town-clerk during six calendar months at the least after every such election; and the town-clerk shall permit any burgess to inspect the voting papers of any year (3), on payment of one shilling for every

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(2) On the trial of a *quo warranto* information for exercising the office of councillor, papers purporting to be voting papers, given in at the election, were produced from the town-clerk's office; and it appeared in evidence that he had been elected town-clerk some days after the election, and had not received himself the voting papers in the first instance; but that they had been delivered to him shortly after his appointment by a person who was not called as a witness:—*Held*, that the papers were not sufficiently identified to be evidence of the votes given. *Reg.* v. *Ledgard*, 8 A. & E. 535.

The mere production of such documents from the proper custody is not sufficient to make them evidence, there being nothing in the Act to constitute them records; and *quære* what is the proper custody, *at the end of six months* after an election. See post, 7 Will. 4 & 1 Vict. c. 78, s. 14, which directs, that the voting papers on the election of aldermen shall be delivered to the town-clerk, "to be kept among the records of the borough."

(3) The words "any year" have been generally construed to extend to the voting papers of the current year, which, under this section, are to be kept by the town-clerk for six months after every election.

Under these words, a town-clerk is not compellable to allow two burgesses at once to inspect the voting papers deposited with him, or to give more than one of the papers to the same person at the same time; but he is bound to allow any voter, who brings a list of his own, to compare it with the papers produced by the town-clerk, and mark it according to what he finds there. *Rex* v. *Arnold*, 4 A. & E. 657.

Where a burgess was refused permission to compare the

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search; and the mayor (4) shall publish (5) a list of the names of the persons so elected not later

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voting papers with a private list of his own, but was furnished with a copy of the burgess roll for that purpose, and afterwards applied for a *mandamus* to the town-clerk to allow him to inspect the burgess roll, the application was refused, the party having been substantially furnished at the time with what he then demanded. *Reg.* v. *Blagg*, 10 Jur. 983.

The rule for a *mandamus* to inspect is *nisi*, not absolute in the first instance, as in cases of parochial books, &c. *Rex* v. *Arnold*, supra.

(4) But where the borough is divided into wards, the "alderman and two assessors" are to publish the list of their ward. See s. 43.

(5) A publication cannot be made after two o'clock; not even for the purpose of correcting an error.

Where the presiding alderman and the two assessors, before two o'clock on the day but one after the election, published a declaration containing a list of the councillors elected, which declaration included the name of P.; they, on discovery of a supposed error, signed and published a *second list*, substituting the name of R. for that of P.; who afterwards made the required declarations under 9 Geo. 4, c. 17, and this Act (see post, s. 50); and R. subsequently did the same; afterwards P. claimed to act; but the mayor and town-council refused to allow him to do so, allowing R. to act:—on an application by P. for a *mandamus* to receive and count his vote, it was held, that the office was not full of R., and that the proper remedy for P. was by *mandamus*; that the second publication, at a time when the returning officer had ceased to have any authority, was altogether void, and that P. was in *de facto*. *Reg.* v. *Mayor &c. of Leeds*, 11 A. & E. 512.

But where a person has been declared to be elected according to the forms prescribed by this section, and has been admitted a councillor, a *mandamus* will not be granted, the

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than two of the clock in the afternoon of the day next but one following the day of such election, unless such day be Sunday, and then on the Monday following.

An alderman to be chosen to preside at election, in case of the death or inability of the mayor (1).

XXXVI. And be it enacted, that if the mayor of any borough shall, at the time when it shall be necessary to execute the powers and duties herein provided *with respect to elections*, be dead, absent, or otherwise incapable of acting (1), the council of

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office being full, and being one for which a quo warranto might be brought. *Reg.* v. *Councillors of Derby*, 7 A. & E. 419; see also *Reg.* v. *Hiorns*, Id. 960, and *Reg.* v. *Mayor &c. of Winchester*, Id. 215, and the cases there cited: although, by mistake of law, the election may have been held at a wrong time. *Reg.* v. *Mayor &c. of Chester*, M. T. 1855.

Where the publication was omitted to be made on the right day, the Court of Queen's Bench refused a *mandamus* to make publication, and swear in the party elected, as having no authority to do so. *In re Corporation of Carmarthen*, Q. B., M. T. 1845. See 7 Will. 4 & 1 Vict. c. 78. s. 12, post.

(1) By s. 49, it is provided that, in the event of a vacancy in the office of mayor occurring by death or otherwise, the council of the borough shall, *within ten days* after such vacancy, elect out of the aldermen or councillors a new mayor. By this 36th section, the council are forthwith to elect an alderman to preside at the election, if *at the time* fixed for such election, the mayor shall be dead, absent, or otherwise incapable of acting; but in neither section is there any provision made for the meeting of the council. For the purpose of electing a new mayor, or an alderman, to preside at an election, there must be *a meeting* of the council; and s. 69, which regulates the meetings of the council under this Act, requires that a three days notice, signed by the mayor, or, in the case of his refusal, by five members of the council, shall be given previous to *any* meeting of that body. This appears to be *casus omissus*. See note to s. 49.

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such borough shall forthwith elect one of the aldermen to execute all such powers and duties in the place of the mayor; provided that in the first election of councillors, and of auditors and assessors, as hereinafter provided, the mayor alone shall act with all the powers and duties hereinbefore enacted concerning the mayor and assessors jointly in such elections.

Election of auditors and assessors.

XXXVII. And be it enacted, that on the first day of March in the year one thousand eight hundred and thirty-six, and in every succeeding year, the burgesses of every borough shall elect from the persons qualified to be councillors (1) by a majority of votes, two burgesses, who shall be and be called auditors of such borough, and two burgesses who shall be and be called assessors of such borough (2); and every such auditor and assessor shall continue in office (3) until the first day of March in the year

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(1) See ante, notes to ss. 28, 30.

(2) This provision relates only to the case of a borough not divided into wards. See s. 43, which provides for the election of assessors of wards; and 7 Will. 4 & 1 Vict. c. 78, s. 4, post, providing for the election of two assessors, to revise the burgess lists with the mayor. See *Rex* v. *Parry*, 6 A. & E. 810, and in note to s. 43, p. 72.

(3) A question has been raised, whether an auditor or an assessor can be *re-elected* at the expiration of his year, and reliance has been placed on the absence of any provision for their re-election, as in the cases of aldermen and councillors by ss. 25 and 31; but another argument against the re-election of assessors is founded on the circumstance, that the

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following his election; and the election of such auditors and assessors respectively shall be in form and manner hereinbefore provided* for the election of councillors: Provided, nevertheless, that in every such election of auditors or assessors no burgess shall vote for more than one person to be an auditor or assessor: Provided also (4), that no burgess shall be eligible to be or be elected such auditor or assessor (5) as aforesaid who shall be of the council, or the town clerk or treasurer of such borough (6). * § 32. Proviso.

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election of them is to be in the form and manner provided for the election of councillors, i. e. before the mayor and themselves (the two assessors), or, in the case of a borough divided into wards, before the alderman and two assessors.

(4) The words of this section provide only against a burgess who shall be in the council being eligible as auditor or assessor; but 7 Will. 4 & 1 Vict. c. 78, s. 15, enacts, "that no burgess shall be eligible to be elected a member of the council while holding the office of assessor or elective auditor." See ante, in note to s. 28, p. 50. *Reg.* v. *Hiorns*, 7 A. & E. 960.

(5) *Quære*, whether, under these words "*such assessor*," (an assessor of *a borough* only having been mentioned), a party, notwithstanding his being in the council, may not be elected an assessor of a ward? see s. 43, post.

As to the duties of assessors, see ss. 18, 43, and notes; as to those of auditors, see post, s. 93. by which it is provided, that the accounts are to be submitted to the two auditors elected according to the provisions of the above section, *and* also to such member of the council as the mayor shall name on the 1st of March, in each year, which last is now popularly termed "the mayor's auditor," in contradistinction to the two "elective auditors."

(6) The election to supply an extraordinary vacancy in the

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XXXVIII. [Existing mayors and councillors to go out of office on election of councillors under this Act (9).]

XXXIX. [Where boroughs are to be divided into wards, the bounds of the wards to be determined by the barristers appointed to revise the lists.]

XL. [Number of councillors for each ward to be assigned by the barristers according to certain rules.]

XLI. [Apportionment of councillors for each ward in which the ancient division is adhered to.]

XLII. [Power to examine rate-books.]

Councillors and assessors to be elected in wards by the burgesses of such wards.

XLIII. And be it enacted, that in every case in which there shall be a division into wards of any borough (1), the burgesses of every such ward, and none others, shall, on the day fixed for the first election of councillors, separately elect from the persons qualified to be councillors the whole number of councillors assigned to such ward respectively, and on the first day of November in any subsequent year shall separately elect from the persons qualified

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office of assessor is to be held before the alderman of the ward, the continuing assessor, and a burgess appointed in writing by the mayor (not being a burgess on the list for that ward). 16 & 17 Vict. c. 79, s. 12, post.

(9) This section and the four following were applicable only to the first year (1835).

(1) As to elections where the borough is not divided into wards, see ss. 30 to 37 inclusive.

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to be councillors one-third part of the whole number of councillors assigned to such ward, and on the first day of March next after the first election of councillors in such ward, and in every subsequent year, shall separately elect from the persons qualified to be councillors two assessors for such ward; and every such ward election first after such division into wards of any such borough shall be held before the mayor, or the person whom the mayor for the time being shall appoint in that behalf, and in every succeeding year shall be held before the alderman (2) whom the councillors chosen in such ward shall yearly appoint in that behalf, and before the two assessors of such ward (3); and the assessors who shall hold the Court for revising the burgess lists with the mayor, shall be the assessors of the mayor's ward (4); and the votings and other proceedings in

See 7 Will. 4 & 1 Vict. c. 78, s. 4.

(2) By 7 Will. 4 & 1 Vict. c. 78, s. 16, post, it is provided, that in case of the illness or incapacity to act of any alderman at any election, the mayor may appoint another alderman to act in his place. And by 17 & 18 Vict. c. 79, s. 10, post, in any borough where the number of aldermen does not exceed the number of wards, the mayor may in the like case appoint a councillor of another ward for the same purpose.

(3) See note (1) to s. 18, ante, p. 36.

(4) It was clearly not foreseen, when this provision was framed, that when the mayor was chosen from amongst the aldermen, there might be no mayor's ward. The clause is, however, repealed by 7 Will. 4 & 1 Vict. c. 78, s. 4, post, which enacts, that in every borough, divided into wards, two assessors shall be chosen on the 1st of March in every year, for the purpose of revising the burgess lists with the mayor, in the same manner as the two auditors of the borough are directed to be chosen by sect. 37 of this Act.

In a case which occurred before the passing of 7 Will. 4 &

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all other respects at such ward elections, shall be conducted in the same manner as at elections of councillors or assessors respectively by the burgesses of the whole borough; and the alderman and assessors of each ward shall have the same powers in regard to elections in their ward as the mayor and assessors for the whole borough if not divided into wards; and every person so elected a councillor or assessor in such ward shall hold his office for the same time that he would have held it if he had been elected by the burgesses of the whole borough, and if the number elected in such ward had been the whole number for the borough (4).

Alderman and assessors in wards to have the same powers as the mayor, &c.

Burgesses to vote in the

XLIV. And be it enacted, that every burgess of

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1 Vict. c. 78, where the assessors were objected to as having been *the assessors of the borough*, and not of the mayor's ward, and no satisfactory answer was given, the Court refused a rule for an information, on the grounds, that no fraud was imputed, that no mischief appeared to have been done, that the prosecution, if successful, would probably dissolve the corporation, and that the prosecutors appeared to have that intention. *Rex* v. *Parry*, 6 A. & E. 810.

See also, on the point of its being *discretionary* in the Court to grant a *quo warranto* information, under circumstances similar to the above, *Rex* v. *Bond*, 2 T. R. 771; *Rex* v. *Corporation of Carmarthen*, 2 Burr. 869; 1 W. Bl. 187; *Rex* v. *Ogden*, 10 Barn. & Cress. 230; *Rex* v. *Mortlock*, 3 T. R. 300; and *Reg.* v. *Taylor*, 11 A. & E. 949.

(4) See ante, s. 37, disqualifying any member of the council from being an assessor of a *borough*. *Quære*, whether a member of the council is eligible as a *ward* assessor, under this section. See 7 Will. 4 & 1 Vict. c. 78, s. 15; and *Reg.* v. *Hiorns*, 7 A. & E. 960.

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any borough shall be entitled to vote in the election of the councillors and assessors to be chosen within that ward, in which the property of such burgess for which he appears to be rated on the burgess roll for the time being of such borough shall appear to be situated, and not otherwise; and if any burgess shall be rated in respect of distinct premises in two or more wards, then he shall be entitled to be enrolled (1) and to vote in such one of the said wards as he shall select, but not in more than one.

Ward in which their property is situated.

XLV. And be it enacted, that, for the purpose of better ascertaining who are the burgesses of any such

Lists of the burgesses in each ward to be made out yearly.

(1) Under this section, a burgess is entitled to be *enrolled* in only one ward, which he is himself to select; but the Act is defective in not fixing any time at or before which the selection must be made. Serious doubts have been entertained, whether, on the revision of the burgess lists, from which, when revised, it must be borne in mind the "*burgess roll*" (see s. 22) is to be formed, there is any power given to the mayor and assessors to erase the name of a party not objected to, and appearing on the lists of two wards, and who does not appear to make his selection.

The general course has been to summon such party to appear at the revision court, and make his election; and in default of his so doing, his name has been struck out of one of the lists. It is clear that there is no *express* authority for this step. But were it not taken, as the town-clerk is purely a *ministerial* officer, and bound to copy *verbatim* the revised lists, a party would be enrolled for two wards, which by this section it is declared he is not entitled to be. The time of the revision, therefore, would appear to be the latest moment at which the voter can select. At all events, it seems that a party, having voted for one ward, has thereby made his election, and cannot at a subsequent election vote for another ward. *Reg.* v. *Morton*, 4 Q. B. 198.

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ward, the burgess roll of every borough so divided into wards shall thenceforward be made out, by or under the direction of the town-clerk (2), in alphabetical lists of the burgesses in each ward, to be called "ward lists" (3).

Manner of proceeding if any person is elected a councillor in more than one ward.

XLVI. And be it enacted, that if at any election of councillors or assessors for any borough any person shall be elected a councillor or assessor in more than one of the wards of such borough, he shall within three days after notice thereof choose, or in his default the mayor shall declare, for which one of the said wards such councillor or assessor shall serve; and such person shall thereupon be held to be elected in that ward only which he shall so choose, or which the mayor shall so declare (1).

Occasional vacancy of councillor, auditor, or assessor, to be filled up by fresh election.

XLVII. And be it enacted, that if any extraordinary vacancy shall be occasioned in the office of councillor, auditor, or assessor for any borough, the burgesses entitled to vote shall, on a day to be fixed by the mayor of such borough, or in the case of a

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(2) See s. 92, providing for the salary of the town-clerk, and for the payment of "expenses" incurred by him in preparing and printing the ward lists, &c.; see also, in note to s. 58, *Jones* v. *Mayor &c. of Carmarthen*, 8 M. & W. 605.

(3) See s. 22 as to the making of the burgess roll where a borough is not divided into wards.

(1) Provision is made, by this section for the mayor's electing for which ward a party elected for more than one shall serve, in default of his making an election himself within three days. A similar provision should have been added to s. 44, the note to which see ante, p. 73.

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councillor or assessor, where the borough shall have been divided into wards, by the alderman of the ward in which the vacancy has happened, (such day not to be later than ten days after such vacancy (1),) elect from the persons qualified to be councillors another burgess to supply such vacancy (2); and such election shall be held, and

(1) Altered by 16 & 17 Vict. c. 79, s. 11, post, to "ten days after notice shall have been given to the mayor or town-clerk by any two burgesses." If, through neglect or otherwise, the vacancy shall not have been filled up within the limited time, the Court of Queen's Bench can, under 7 Will. 4 & 1 Vict. c. 78, s. 26, post, award a *mandamus* for that purpose, as under 11 Geo. 1, c. 4, the provisions of which statute are, by the last-mentioned section, extended to elections under this Act and under 7 Will. 4 & 1 Vict. c. 78.

(2) *Semble*, that proceedings can be taken under this section only where the vacancy is fully established by judgment of ouster, or by due course of law, under s. 52 (see *Reg.* v. *Pippen*, 7 A. & E. 966, and ante, s. 28, note (2)), or in case of death, or of a resignation duly made and accepted by the corporation, or in case of amotion by the corporate body for due cause.

The power of amotion for reasonable cause is incident to every corporation. Ser 2 Kyd on Corporations, page 50, as to the general power of corporations in removing members of the corporate body; see also *Rex* v. *Richardson*, 1 Burr. 517; *Rex* v. *Doncaster*, 2 Burr. 728; *Rex* v. *Liverpool*, Id. 723; *Jay's case*, 1 Vent. 302; *The case of Lyme Regis*, Doug. 149; *Rex* v. *Taylor*, 3 Salk. 231, 1 Roll. Rep. 409, 3 Bulst. 189, 1 Ld. Raym. 225; *R.* v. *Heaven*, 2 T. R. 772; *Reg.* v. *Mayor &c. of Newbury*, 1 Q. B. 751.

In 2 Kyd, 62, it is observed, "the offences for which a corporator may be disfranchised, or a corporate officer removed, have been distributed into three distinct classes:—

"*First*, such as relate merely to his corporate or official character, and amount to breaches of the condition tacitly or expressly annexed to his franchise or office.

"*Secondly*, such as have no immediate relation to his cor-

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the voting and other proceedings, in case of a contest, shall be conducted in the same manner and subject to the same provisions as are hereinbefore* enacted with respect to the election of councillors as aforesaid (3); and every person so elected shall hold such office until the time at which the person in room of whom he was chosen would regularly have gone out of office, and he shall then go out of office, but shall be capable of immediate re-election, if then qualified as herein provided: Provided always (4),

* Sect. 32.

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porate or official character, but are in themselves of so *infamous* a nature, as to render the offender unfit to enjoy any public franchise; such as perjury, forgery, &c.

"And, *Thirdly*, offences of a *mixed* nature, being not only against his corporate or official duty, but also indictable at common law."

(3) See now, as to the persons before whom the election of an *assessor*, in the case of an extraordinary vacancy, is to be held, 16 & 17 Vict. c. 79, s. 12, post.

(4) This provision is repealed by 7 Will. 4 & 1 Vict. c. 78, s. 11, which renders valid all elections to supply extraordinary vacancies, "which *shall have been* had on the first day of November then last, though the number of councillors did then exceed two-thirds of the whole number; and though such vacancy may have occurred more than ten days previously to the said first day of November;" if in other respects the election shall have been held according to the provisions of this Act. See the section in full, post; on which it may be here observed, that the Court of Queen's Bench decided, in *Reg.* v. *Rowley*, 3 Q. B. 143 (*S. C.*, in the Exchequer Chamber, 6 Q. B. 668), that where an election of four councillors had taken place on the first of November, three of whom were to supply *ordinary* vacancies, and the fourth an *extraordinary* vacancy, but no distinction had been made between them, either in the notice of election, the voting papers, or in the publishing of the names of the four persons elected, such election was irregular and void.

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that, after the full number to be regularly elected of the councillors in any year shall have declared their acceptance of office, no new election of councillors shall be made by reason of such extraordinary vacancy, unless the number of councillors remaining after such vacancy shall not exceed two-thirds of the whole number of the council of such borough.

Penalties on mayor, overseers, &c., neglecting to comply with provisions of this Act.

XLVIII. And be it enacted, that if any mayor, alderman, or assessor of any borough who shall be in office at the time herein appointed for the revision by them of the burgess list under this Act, or for any election of councillors, assessors, or auditors which he is required to conduct or declare, shall neglect or refuse to revise such burgess list, or to conduct or declare such election as aforesaid, every such mayor, alderman, and assessor shall for every such offence forfeit and pay the sum of one hundred pounds; and if any overseer of any parish wholly or in part within any borough shall neglect or refuse(1) to make out, sign, and deliver such list as

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Care, therefore, must be taken, should an election to supply an *extraordinary* vacancy take place on the day of an ordinary election, that in the notice of the election, as well as in all other subsequent proceedings, a distinction is preserved between the two classes of candidates and the two descriptions of vacancies, so that it may distinctly appear who is to fill the extraordinary vacancy, and who the ordinary. See also note to s. 32, ante, and *Reg.* v. *Mayor &c. of Leeds*, 7 A. & E. 963.

(1) The omission, whether wilful or not, to sign the burgess list (as required by s. 15), subjects the overseer to the above penalty. *King* v. *Burrell*, 4 P. & D. 207; 12 A. & E. 460. The word "wilfully," it will be observed, does not occur

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aforesaid, or if the town-clerk of any borough shall neglect or refuse to receive, print, and publish such lists as aforesaid, or if any such overseer or town-clerk shall refuse to allow any such list to be perused by any person having right thereunto, every such overseer and town-clerk respectively for every such offence shall forfeit and pay the sum of fifty pounds; and the said penalties hereby in such case imposed shall be recovered, with full costs of suit, by any

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in this section; any of the parties, therefore, above named, who omit to do any of the acts which they are by the provisions of this statute required to do, and which they can do, incur the above penalties, whether they act wilfully or not. See also *King* v. *Share*, 3 Q. B. 31; 2 G. & D. 453, where the defendant, an overseer of a parish divided into nine districts under a local Act, who had only made out and signed the list of his own district, was held liable to the penalty, though it was admitted the omission had taken place through his ignorance of the requisites of the statute. The same case decided, that separate actions are maintainable against *each* overseer, for the omission to sign the list pursuant to the statute. See ante, note (3) to s. 15, p. 30. The declaration in an action for a penalty under this section stated that the defendant was an overseer, and that it was his duty, as such overseer, to make out and sign a list of persons entitled to be on the burgess roll, and that he unlawfully neglected so to do: *Held* sufficient after verdict, though it did not aver that there were any persons entitled to have their names on the list: *Clarke* v. *Gant*, 8 Exch. 252.

Cumulative penalty.

If an overseer has neglected to make out the lists as required by s. 15, and has been sued for and paid the penalty, he cannot be sued for a *second penalty*, for refusing to allow "such list to be *perused*." *Gregory* v. *Fell*, 1842, MS. *Quære*, whether an overseer would be liable to be sued under this section, for refusing to allow a person to peruse a list, if he should have neglected to make out any.

See 16 & 17 Vict. c. 79, s. 14, post, and in note (2), ante, p. 30.

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person who will sue for the same within three calendar months after the commission of such offence, by action of debt or on the case(9), in any of his Majesty's superior Courts of record; and the money so to be recovered shall, after payment of the costs and expenses attending the recovery thereof, be paid and apportioned as follows; (that is to say,) one moiety thereof to the person so suing, and the other moiety thereof to the treasurer, to be appointed by virtue of this Act, to be by him applied in aid of the borough fund hereinafter mentioned*.

* § 92.

Council to elect the mayor every year from the councillors.

XLIX. And be it enacted, that on the ninth day of November(1) in every year the council of the borough shall elect out of the aldermen or councillors of such borough a fit person to be the mayor of such borough, who shall continue in his office for one whole year(2); and in case a vacancy shall be occa-

In case of va-

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(9) This action must be commenced within three calendar months after the commission of the offence. See post, s. 133, as to *venue*, &c., in actions against persons for anything done "in pursuance of this Act;" and in note to the same section, *King* v. *Burrell*, 12 A. & E. 460, where it was held, that a party sued for the penalty for neglecting to sign a burgess list, was not within the provisions of that section.

Election of mayor.

(1) The 69th section enacts, that the election of mayor shall be the first thing to be done at the meeting appointed to be held on the ninth of November; see *Reg.* v. *M'Gowan*, 11 A. & E. 869.

See ss. 57, 58, as to the precedence and salary of the mayor. As to his power to appoint a deputy, see 16 & 17 Vict. c. 79, ss. 7 & 8, post.

(2) Stat. 6 & 7 Will. 4, c. 105, s. 4, enacts, that the mayor shall continue in office for one whole year, *and until* his suc-

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cancy in office of mayor.

sioned in the office of mayor of the borough during such year by reason of any person who shall have been elected to such office not accepting the same, or by reason of his dying or ceasing to hold the said office, the council of the borough (3) shall within ten days after such vacancy elect out of the aldermen or councillors of the said borough another fit person to be the mayor thereof for the remainder of the then current year.

Mayor, aldermen, and councillors, auditors, and assessors, not to act until they have made a declaration of acceptance of office.

L. And be it enacted, that no person, elected a mayor, alderman, or councillor, or auditor, or assessor for any borough, shall be capable of acting as such, except in administering the declaration hereinafter contained, until he shall have made and subscribed before any two or more such aldermen or councillors (who are hereby respectively authorised and required (1) to administer the same to each other,)

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cessor shall have accepted the office of mayor, and shall have made and subscribed the requisite declaration.

The mayor may be *re-elected*. 3 & 4 Vict. c. 47, post, App.

(3) No provision is here made for the assembling of the council. S. 69 provides, that previous to any meeting of the council, three days notice shall be given, such notice to be signed by the mayor; and in case of his "*refusal*" to call any meeting, five members of the council may give the requisite notice. A similar difficulty arises under s. 36; where the council, in the case of the death, absence, or other incapacity of the mayor to preside at any election, are to elect an alderman for that purpose.

See now 16 & 17 Vict. c. 79, s. 9, which directs the town-clerk to sign the notice to elect a mayor on a vacancy.

(1) It had been considered that the administering of the

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a declaration(2) in the words or to the effect following; (that is to say),

'I, A. B., having been elected mayor [*or* alderman, 'councillor, auditor, *or* assessor] for the borough 'of ———, do hereby declare, that I take the 'said office upon myself, and will duly and faithfully 'fulfil the duties thereof according to the best of my

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above declaration was a *purely ministerial* act. But in the case of *Reg.* v. *Greene*, 2 Q. B. 460, it was held that the aldermen or councillors called on to administer the declaration might refuse to administer it, if satisfied of the disqualification of the party; and consequently, that a councillor, who had administered the above declaration to A. B., could not, after having *so concurred*, be a relator in an information in the nature of a *quo warranto* against A. B.; the act of administering being so far voluntary as to amount to a concurrence, at all events if done without any protest or remonstrance as to the ground of objection, which it appeared was known at the time to the relator. See, on the point of a party who has concurred in an election not being allowed to be a relator, *Rex* v. *Dawes*, 4 Burr. 2180; *Rex* v. *Morris*, 3 East, 213; *Rex* v. *Smith*, 3 T. R. 573; *Rex* v. *Symmons*, 4 T. R. 223; *Rex* v. *Slythe*, 6 B. & C. 240; *Rex* v. *Trevenen*, 2 B. & A. 339; *Rex* v. *Parkyn*, 1 B. & Ad. 690.

The merely having *acted with* the person whose title is impeached is not a sufficient ground of objection to a relator. See *Rex* v. *Clarke*, 1 East, 38; *Rex* v. *Benney*, 1 B. & Ad. 685.

Where the relator's own election was subject to the same defect, the rule for a *quo warranto* was discharged: *Rex* v. *Cudlip*, 6 T. R. 503.

(2) Upon the declaration required by this section being made, the office becomes full *de facto*, and can only be questioned by a *quo warranto* information: *Rex* v. *Mayor of Winchester*, 7 A. & E. 215. See *Rex* v. *Swyer*, 10 B. & C. 486.

But in no case will the Court of Queen's Bench grant a *quo warranto* information, unless it clearly appears that the

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'judgment and ability; [*and in the case of the party 'being qualified by estate, say,*—And I do hereby de- 'clare that I am seised or possessed of real or per- 'sonal estate, *or both* [*as the case may be*], to the 'amount of one thousand pounds *or* five hundred 'pounds, *as the case may require*, over and above 'what will satisfy all my debts.'

Aldermen, if required, to make a declaration of qualification once in three years.

And that every alderman who shall have made and subscribed the foregoing declaration in respect of estate shall once in every period of three years, if required in writing so to do by any two members of the council, make and subscribe a declaration that he is qualified to the same amount in real or personal estate, or both, as the case may then be, as the amount mentioned in the declaration originally made and subscribed by him: Provided always, that nothing in this Act contained shall be construed

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office is full *de facto*. It is not sufficient that the affidavit simply states that the party "has accepted the office," without specifying the particulars and mode of his acceptance, such as that he has made the declaration required by this section, or that he has acted &c.: *Reg.* v. *Slatter*, 11 A. & E. 505. Where, however, the party had been sworn in, though informally, this was held a sufficient user whereon to ground a *quo warranto*. *Rex* v. *Tate*, 4 East, 337. And in a case where the affidavit stated that the party had taken on himself the office, and acted in that capacity, and had been seen present at meetings of the council acting as a councillor; though the nature of the acceptance or acting was not further specified, and though it was not stated that he had made the declaration under this section, the Court made the rule absolute for the *quo warranto* information. *Reg.* v. *Quale*, 11 A. & E. 508; see also *Reg.* v. *Mayor &c. of Leeds*, 11 A. & E. 512; and cited in note (5) to s. 35, ante, p. 66.

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to dispense with the obligation of any person to make and subscribe the declaration provided and enjoined by an Act(3) made in the ninth year of his late Majesty George the Fourth, intituled *An Act for repealing so much of several Acts as imposes the necessity of receiving the Sacrament of the Lord's Supper as a qualification for certain offices and employments.* 9 Geo. 4, c. 17.

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(3) The 9 Geo. 4, c. 17 (in ss. 2, 3, see post, Appendix), requires that every person elected, &c., into the office of alderman, &c., shall, *within one calendar month next before, or upon his admission* into such office, make and subscribe a declaration, as therein provided; and by sect. 4 it is enacted, that if he shall omit or neglect to make and subscribe the said declaration in manner above mentioned, such placing, election, or choice shall become *void.*

Upon these words, it was held by the Court of Exchequer Chamber, 10 A. & E. 365 (reversing the judgment of the Court of Queen's Bench in *Reg.* v. *Humphery*, 10 A. & E. 335), that the statute does not give the person elected a month at all events, for deciding whether he will make the declaration or not; but only excuses him from making it at the time of admission, if he has made it within a month before; that the words "*upon his admission*" mean, upon the occasion of, or at the time of, his admission, and not a reasonable time after; that the authorities who admit may prescribe the order in which the ceremonies, forming parts of the admission, shall take place; and that, if the party offers himself to the proper court to be admitted, not having made the declaration within a month before, and being asked whether he will make it or not, declines to say, but requires the Court to admit him, which they refuse, *the election is thereupon void*, and a precept may issue for a fresh election. But where a party elected to an office unintentionally omitted to take the requisite oaths, it was held that he might avail himself of the Indemnity Acts, and that his title to such office was by them protected and made valid. *R.* v. *Parry*,

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Every burgess elected to the office of alderman, councillor, auditor, or assessor, and

LI. And be it enacted, that every person duly qualified who shall be elected to the office of alderman, councillor, auditor, or assessor, and every councillor (1) who shall be elected to the office of mayor,

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14 East, 549; see also *Reg.* v. *Mayor of Cambridge*, 4 P. & D. 270; 12 A. & E. 702.

The statute 5 & 6 Will. 4, c. 28, expressly exempts *sheriffs* from making the declaration required by 9 Geo. 4, c. 17.

See also *Exon* v. *Starre*, 2 Shower, 159, where *a refusal to take the oaths* imposed by statute was held to be equivalent to *a refusal of the office*. *S. C.*, in error, *Starre* v. *Mayor of Exeter*, 3 Lev. 116.

Though the taking of the oaths of allegiance, &c., is not mentioned in this section, it would seem that they must still be taken. The "oaths to government," in contradistinction to the "corporation oaths," should properly (see *Rex* v. *Inhabitants of Corfe Mullen*, 1 B. & Ad. 219) be all taken at the time of the admission of the party to the office. See 11 Geo. 1, c. 4, s. 4, in Appendix, containing an express provision to this effect, as to the persons elected under the provisions of that Act.

As to Quakers, Moravians, and Separatists, see the stats. 1 & 2 Vict. cc. 5 & 15, post And as to the declaration to be made by Jews, see 8 & 9 Vict. c. 52, post.

(1) A question has sometimes arisen under these words, whether an *alderman*, elected *mayor*, and declining to accept the office, is subject to any fine under this section. It is submitted, that so clear a distinction has been made throughout the Act (see ss. 25 & 49), between aldermen and councillors, that no fine can be inflicted on an alderman under such circumstances. But as it is an offence at common law for a person, without some legal ground of exemption, to refuse to take upon himself an office to which he has been duly elected, the Court will grant a *mandamus* calling upon the party so elected to serve the office; see *Rex* v. *Bower*, 1 B. & C. 585, where it was held, that the payment of a fine imposed by a bye-law for not serving the office of councillor

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for any borough, shall accept such office to which he shall have been elected, or shall in lieu thereof pay to the mayor, aldermen, and burgesses of such bo-

every councillor elected to the office of mayor, shall accept

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was no answer to a *mandamus;* the fine not being payable by the bye-law *in lieu of service.* A person so refusing is also indictable (see *Vanacher's case,* 1 Ld. Raymond, 499; Carthew, 400), or liable to a criminal information; see *Rex* v. *Whitwell,* 5 T. R. 86, where it was observed by Mr. Justice *Buller*—"The Court have granted *criminal informations* against persons for not taking on themselves offices to which they have been legally elected; and the case of *Rex* v. *Brown* was tried before me at Liverpool, upon that ground." See the facts of that case cited in *Rex* v. *Leyland,* 3 M. & Sel. 186. In this latter case the Court granted a *mandamus* directing the defendant, who was a common-councilman, to take upon himself the office of mayor; though it was alleged that he had already served the office, and was residing four miles from the borough, and was acting as a county magistrate, and that, if he were compelled to serve the office, he should be obliged to remove his residence into the borough.

But the granting of criminal informations in these matters is *discretionary* with the Court. And in *Reg.* v. *Hungerford,* 11 Mod. 142, the Court refused the rule for a criminal information against a person who refused to take upon himself the office of common-councilman; observing that the corporation might, by a bye-law, inflict a penalty for such a refusal. So also in *Rex* v. *Grosvenor,* 2 Str. 1193, (the case of a dissenter), the criminal information was refused, it appearing that there were acts of the common-council which provided other remedies, and it not being clear that the refusal in *such a person* was a crime. See note to s. 8 of 6 & 7 Will. 4, c. 104, post.

This section makes no provision for the resignation of persons elected into corporate offices; but it has been since provided, by 6 & 7 Will. 4, c. 104, s. 8, that such persons may at any time resign such offices, on payment of the fine which they would have been liable to pay for non-acceptance of the same; see the note to this last-mentioned section. And

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the office or pay a fine to the borough fund.

rough such fine not exceeding fifty pounds in case of aldermen, councillors, auditors or assessors, and such fine not exceeding one hundred pounds in case of mayor, as the council of such borough by a bye-law to be made(2) as hereinafter provided * shall declare in that behalf; and such fine if not duly paid shall be levied by the warrant of any justice having jurisdiction within the borough, who is hereby required on the application of the council(3) to issue the same, by distress and sale of the goods and chattels of the person so refusing to accept office, with the reasonable charges of such distress; and every such

* § 90.

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semble, that though no bye-law has been passed fixing a fine for such non-acceptance, a party may make a valid resignation to the council, and they may accept it. *Staniland* v. *Hopkins*, 9 M. & W. 178.

(2) *Semble*, that it is incumbent on the council to make the bye-law declaring the fine; and that in case of their neglect to do so, the Court would compel them by *mandamus*. See *Vanacher's case*, 1 Lord Raymond, 499, and 5 Mod. 440.

In the 8th section of 6 & 7 Will. 4, c. 104, there is also a proviso that no person enabled to make an affirmation (see 7 & 8 Will. 3, c. 34, and 9 Geo. 4, c. 32) instead of taking an oath, shall be liable to any fine for non-acceptance of office, if the refusal be on *conscientious* grounds, either to take an oath or make any declaration required by the Municipal Corporation Act, or to take upon himself the office; see the note to that section, post.

See also 1 & 2 Vict. c. 5, and 1 & 2 Vict. c. 15, giving further relief to such persons.

(3) No mode is pointed out in which the application by the council is to be made. It will be proper, it is suggested, for the council to draw up a written resolution, and then to serve the justices with a copy of it, signed by the mayor or other chairman at the meeting of the council.

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person so elected shall accept such office by making and subscribing the declaration hereinbefore mentioned within five days after notice (4) of his election (5), otherwise such person shall be liable to pay the said fine as for his non-acceptance of such office, and such office shall thereupon be deemed to be vacant, and shall be filled up by a fresh election to be made in the manner hereinbefore mentioned: Provided always, that no person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, shall be liable to such fine as aforesaid: Provided also, that every person so elected to any such office who shall be above the

Exemptions.

Infirmity.

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(4) This does not mean any casual or private notice or knowledge which he may appear to have had of the fact, but notice acquired either by being present at the election or by some official notification. *Reg.* v. *Preece*, 5 Q. B. 94; Dav. & M. 156.

(5) This provision applies only to a case in which the party is himself returned at the election, and not to a case in which, though he was in truth duly elected, another person was (improperly) returned. Therefore where, at an election for councillor, A. and B. were candidates, but A. was at the time disqualified by being an alderman, of which the voters had notice, A. had a majority of votes, and was returned, accepted the office, and acted; whereupon B. obtained a rule for an information in the nature of a *quo warranto*, which was made absolute; but on the information being filed, B. disclaimed, and judgment of ouster was signed against him; and some months afterwards (but before acting) B. gave notice to the council requiring them to admit him as having been duly elected, and accepted the office and signed the declaration required by this section: B. was held thereupon to be full councillor, and capable of voting in the election of mayor. *Reg.* v. *Coaks*, 3 E. & B. 249.

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Previous service.

age of sixty-five years, or who shall have already served such office respectively, or paid the fine for not accepting such office respectively, within five years from the day on which he shall be so re-elected, shall be exempted from accepting or serving the same office if he shall claim such exemption within five days after notice of his election: Provided always, that nothing in this Act contained shall extend to compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in his Majesty's service on full pay, or by any officer or other person employed and residing within any of his Majesty's dockyards, victualling establishments, arsenals, or barracks.

Military and other officers, &c.

Any mayor, alderman, or councillor, if he shall be declared bankrupt or insolvent, or absent himself from the borough, shall lose his office.

LII. Provided always, and be it enacted, that if any person holding the office of mayor, alderman, or councillor for any borough shall be declared bankrupt, or shall apply to take the benefit of any Act for the relief of insolvent debtors, or shall compound by deed with his creditors(1), or, being mayor, shall

(1) It would seem that the causes of loss of office expressly above provided for, viz. bankruptcy, insolvency, compounding with creditors, or temporary absence from the borough, were not such as would have afforded the corporation, at common law, ground for the removal of any of its members. See 2 Kyd on Corporations, p. 65; and note (2) to s. 47, ante, p. 75, and the cases there cited.

Neither auditors nor assessors are mentioned in this section. The tenure, therefore, of their offices will not, it seems, be affected by their bankruptcy or insolvency, &c. It is true that, by s. 37, they are to be *elected* "from persons qualified to be councillors;" but though there is a provision in the above s. 52, that a councillor becoming bankrupt *while holding office* shall be disqualified, &c., yet there is nothing in

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be absent for more than two calendar months, or, being an alderman or councillor, for more than six months, at one and the same time, (unless in case of illness), from the borough of which he shall be mayor, alderman, or councillor, then and in every such case such person shall thereupon immediately become disqualified, and shall cease to hold the office of such mayor, alderman, or councillor as aforesaid, and in the case of such absence shall be liable to the same fine, to be recovered in the same manner, as if he had refused to accept the said office, and the council thereupon shall forthwith declare the said office to be void, and shall signify the same by notice in writing under the hands of three or more of them, countersigned by the town-clerk, to be affixed in some public place within the borough, and the said office shall thereupon become void(2); but every Every such

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the Act to prevent a burgess from being elected a councillor while he is an uncertificated bankrupt. This latter point was so ruled in *Rex* v. *Chitty*, 5 A. & E. 609; 1 N. & P. 78. See ante, s. 28.

(2) The course pointed out by this section for declaring the vacancy must be strictly followed: the office, it seems, will not be *void*, till the notice in writing has been duly given, and the other steps above pointed out have been taken. *Reg.* v. *Mayor &c. of Leeds*, 7 A. & E. 963; see also *Reg.* v. *Mayor &c. of Oxford*, 6 A. & E. 349.

Notwithstanding the *subsequent loss of qualification* by a party holding a corporate office, it seems that, except in the cases specified in this section, the office will remain full *de facto*, till the vacancy has been determined by a judgment on a *quo warranto* information. Thus, where a councillor had, during his term of office, been left out of the burgess list by the overseers, for alleged nonpayment of rates, but continued to exercise the office, the Court of Queen's Bench

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person may be re-elected.

person so becoming disqualified and ceasing to hold such office on account of his being declared a bankrupt, or of his applying to take the benefit of any Act for the relief of insolvent debtors, or having compounded with his creditors as aforesaid, shall, on obtaining his certificate or on payment of his debts in full, be capable (if otherwise qualified) of being re-elected to such office, and every person becoming disqualified to hold such office on account of absence as aforesaid shall on his return to such borough be capable of being re-elected to such office, provided he shall then be otherwise qualified.

See § 28.

Penalty on persons not qualified, &c., acting as mayor, alderman, or councillor.

LIII. And be it enacted, that if any person shall act as mayor, alderman, or councillor, or auditor or assessor, for any borough, without having made the declaration hereinbefore required* in that behalf,

* § 50.

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determined that they would not, on affidavit of those facts, issue a *mandamus* to the mayor or to the alderman of the ward to proceed to a new election, holding that the vacancy must be first ascertained by a judgment on a *quo warranto* information. *Reg.* v. *Phippen*, 7 A. & E. 966; *S. C.*, as *Reg.* v. *Ricketts*, 3 N. & P. 151; and see note (2) to s. 47, ante, p. 75. But in *Reg.* v. *Mayor &c. of Oxford*, 6 A. & E. 349, it was held, that when a councillor had been left out of the burgess list, another councillor might be elected to supply his place (if the proceeding were *bonâ fide*), though A. had not resigned or been ousted by a *quo warranto*. But this case, perhaps, was decided more on the ground that the rule for the *mandamus* was misconceived, the application being for a *mandamus* to restore A. to, instead of to permit him to exercise, his office, than on the question of the office being vacant or not. See *R.* v. *Heaven*, 2 T. R. 772; *R.* v. *M'Kay*, 4 B & C. 658; *R.* v. *Corporation of West Looe*, 3 Burr. 1386.

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or without being duly qualified (1) at the time of making such declaration, or after he shall cease to be qualified according to the provisions of this Act, or after he shall have become disqualified to hold any such office (2), he shall for every such offence forfeit the sum of fifty pounds, such sum to be recovered, with full costs of suit, by any person who will sue for the same within three calendar months after the commission of such offence, by action of debt (3) or on the case in any of his Majesty's superior Courts of record; and every person so sued by reason of not being so qualified in respect of estate shall prove that he was, at the time of so acting, qualified as aforesaid, or otherwise shall pay the said penalty, without any further evidence being given on the

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(1) See 6 & 7 Will. 4, c. 104, s. 7, by which it is enacted, that no person enrolled on the "*burgess roll*" for the time being of any borough, &c., and who shall act as mayor, alderman, or councillor, auditor, or assessor, of such borough, shall be liable to any penalty for so acting, on the ground that he was not entitled to be on the *burgess list* of such borough. See ante, p. 48, in note (3) to s. 28, as to the interpretation to be put on the words "the burgess list of a borough."

(2) *Quære*, whether a mayor, elected when alderman, is disqualified to act as mayor, and liable to the penalty, within this section, by reason of a disqualification when alderman. *Le Feuvre* v. *Lankester*, 3 E. & B. 530.

(3) The action must be commenced within three calendar months after the commission of the offence; but it should be borne in mind, that such action can only be brought by a "burgess," who must have served a written notice of action personally upon the party "within fourteen days after the commission of the offence." See post, s. 133, note (3); see also s. 48, note (9), ante, p. 79. The declaration need not, however, state that the plaintiff is a burgess. *Simpson* v. *Ready*, 12 M. & W. 736; see the next note.

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part of the plaintiff than that such person has acted as the mayor, or as alderman, councillor, auditor, or assessor (as the case may be) of such borough: Provided always, that it shall be lawful for any defendant, by judge's order to be obtained within fourteen days after he shall have been served with process in any such action, to require the plaintiff to give security for costs; and in such case all further proceedings in the said cause shall be stayed until the plaintiff shall give security to the satisfaction of the proper officer of the Court for the costs of such action in case a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue such action, or if upon demurrer or otherwise judgment shall be given against the plaintiff; and the defendant shall, in either of such cases, recover his full costs as between attorney and client: Provided also, that no such action shall be brought except by a burgess of such borough (4), nor unless the burgess bringing the same shall, within fourteen days after the commission of the offence, have served a notice in writing personally upon the party committing such offence of his intention to bring such action; and in case the plaintiff in any such action shall obtain a verdict, the money so to be recovered shall, after payment of the costs and expenses attending the recovery thereof, be paid and apportioned as follows; (that is to say), one moiety thereof to the person so suing, and the other moiety thereof to the treasurer to be

Security for costs.

Proviso—that burgess only bring such action.

(4) This, though it comes by way of *proviso*, amounts to an *exception*. It is therefore not necessary, in the declaration in such action, to aver that the plaintiff is a burgess. *Simpson* v. *Ready*, 12 M. & W. 736.

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appointed by virtue of this Act, to be by him applied in aid of the borough fund: Provided always, that all acts and proceedings (5) of any person in possession of the office of mayor, alderman, councillor, auditor, or assessor, and acting as a mayor, alderman, councillor, auditor, or assessor, shall, notwithstanding such disqualification or want of qualification, be as valid and effectual as if such person had been duly qualified.

Proviso—all acts, &c., to be valid.

LIV. And be it enacted (1), that if any person who shall have or claim to have any right to vote in any election of mayor, or of a councillor, auditor, or assessor of any borough shall, after the passing of this Act, ask or take any money or other reward by way of gift, loan, or other device, or agree or contract for any money, gift, office, employment, or other reward whatsoever, to give or forbear to give his vote in any such election, or if any person, by himself or any person employed by him, shall, by

Persons convicted of bribery disqualified from voting at any election in the borough.

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(5) All acts, &c., of any person "in the possession of the office of mayor," &c., are declared to be as valid and effectual as if such persons had been duly qualified. This proviso, it was thought, might not extend to the case of an election held before a presiding officer, who had not a good title to his office. It was therefore provided by 7 Will. 4 & 1 Vict. c. 78, s. 1, that no election of any corporate officer shall be liable to be questioned by reason of any defect or want of title in the presiding officers at such elections, provided the officers were at the time *de facto* in possession of the offices giving the right to preside.

(1) The provisions of this and the next following section are similar to those contained in the Bribery Act, 2 Geo. 2, c. 24, excepting that the present section makes it an offence also "*to offer to corrupt*," &c. See also 49 Geo. 3, c. 118; 7 & 8 Geo. 4, c. 37; 5 & 6 Vict. c. 102; 17 & 18 Vict. c. 102.

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any gift or reward, or by any promise, agreement, or security for any gift or reward(2), corrupt or procure, or offer to corrupt or procure(3), any person to give or forbear to give his vote in any such election, such person so offending in any of the

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(2) The corrupt employment of a voter in hauling stones at certain hire, is a *reward* within this part of the section, as well as within the former part. *Harding* v. *Stokes*, 1 M. & W. 354.

(3) Under this section, the offence of corrupting a voter is complete where the bribe is offered and accepted, and the voter promises to vote in pursuance of the corrupt contract, although he may break his promise, or may never have intended to perform it; but where a bribe is offered, but not accepted, the offence is that of *offering to corrupt;* and it is for the jury to say whether there was a complete agreement or not. *Harding* v. *Stokes*, 2 M. & W. 233; see *Bush* v. *Ralling*, Sayer, 289.

See also *Henslow* v. *Fawcett*, 3 A. & E. 51, 4 N. & M. 592, where the briber's offence, under 2 Geo. 2, c. 24, s. 7, was held to be complete by his giving the money to induce B. to vote, *and* by B.'s accepting it on those terms; though B. might never have intended to fulfil his promise. "*The corrupting*" is complete, without the vote being given. See also *Sulston* v. *Norton*, 3 Burr. 1235, *acc.*, where Lord *Mansfield* observed, "*Bush* v. *Ralling*, Sayer's Reps. 289, is in point; and I wonder how it could ever be a doubt; for the offence was *completely* committed by the *corrupter*, whether the other party shall ever perform his promise or break it." In which case it was also observed, that the bribery by a *pretended loan* is but mere colour and evasion, and is really bribery *by gift*. See *S. C.*, 1 W. Bl. 317; also 2 Doug. 415; and the *Coventry case*, 1 Peck, 97.

But a voter's receiving money *after an election*, for having voted for a particular candidate, without any previous agreement or understanding before or during the election, is not an offence within the statute. *Lord Huntingtower* v. *Gardiner*, 1 B. & C. 297.

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cases aforesaid shall for every such offence forfeit the sum of fifty pounds of lawful money of Great Britain, to be recovered, with full costs of suit, by any one who shall sue for the same, by action of debt(4), bill, plaint, or information in any of his Majesty's Courts of record at Westminster; and any person offending in any of the cases aforesaid, being lawfully convicted thereof, shall for ever be disabled to vote in any election in such borough, or in any municipal or parliamentary election whatever in any part of the United Kingdom, and also shall for ever be disabled to hold, exercise, or enjoy any office or franchise to which he then shall or at any time afterwards may be entitled as a burgess of such borough, as if such person was naturally dead.

Persons offending in any of the cases afore-

LV. And be it enacted, that if any person offending in any of the cases aforesaid shall, within the

(4) This action must be commenced within two years after the penalty being incurred: see s. 56.

As to the sufficiency of the averments in a declaration for a penalty under this section, see *Harding* v. *Stokes*, 1 M. & W. 354.

All the parties, to vote for whom the bribe was given, need not be stated in the declaration. *Davy* v. *Baker*, 5 Burr. 2471. But a *general* statement that the party was bribed, without stating the particular mode; or a statement of the offence in the disjunctive, that the defendant received a gift *or* reward, is insufficient; and such a declaration would be bad in arrest of judgment. Id. It is immaterial whether the party has a vote or not in reality, if he claimed one. See *Combe* v. *Pitt*, 1 W. Bl. 523.

As to the evidence in an action for bribery at a borough election, see *Webb* v. *Smith*, 4 Bing. N. C. 373. See also *Mead* v. *Robinson*, Willes, 422.

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said, discovering others so offending, to be discharged from all penalties.

space of twelve months next after such election as aforesaid, discover any other person(1) offending in any of the cases aforesaid, so that such other person be thereon convicted, such person so discovering, and not having been before that time convicted of any such offence, shall be indemnified and discharged from all penalties and disabilities which he shall then have incurred by any such offence.

No person liable to incapacity, penalty, &c., unless prosecuted within two years.

LVI. Provided always, and be it enacted, that no person shall be made liable to any incapacity, disability, forfeiture, or penalty by this Act imposed in any of the cases aforesaid, unless prosecution be commenced within two years after such incapacity, disability, forfeiture, or penalty shall be

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(1) The mere bringing of an action by A. against B. for bribery will not, of itself, constitute A. the first discoverer, so as to afford to A. an answer in a subsequent action brought against him for bribery at the same election. The making of an *affidavit* as to the bribery of B., by a witness in the cause of A. against B., is sufficient to indemnify such witness, who is to be considered the first discoverer. *Sibley* v. *Cuming*, 4 Burr. 2464. See also *Sutton* v. *Bishop*, 4 Burr. 2283, *acc.*, where the Court observed, that the defendant who made the original affidavit, and who afterwards appeared as a witness in the action against the party charged, was to be deemed *the discoverer*; "the other witnesses were only *supporters* of his discovery;" adding, "the clause speaks of the discoverer in the singular number. The prosecutor could not be evidence for himself. If no one but the prosecutor could be considered the discoverer, the clause would be ineffectual." *S. C.*, 1 W. Bl. 665.

A verdict, without a judgment on it, is not sufficient to constitute *a conviction* within the meaning of this section. *Sutton* v. *Bishop*, Id. 666.

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incurred, anything herein contained to the contrary notwithstanding(1).

The mayor to be a justice of the peace for the borough, and returning officer at elections of members to serve in Parliament.

LVII. And be it enacted, that the mayor for the time being of every borough shall be a justice of the peace of and for such borough, and shall continue to be such justice of the peace during the next succeeding year after he shall cease to be mayor, unless disqualified as aforesaid; and such mayor shall, during the time of his mayoralty, have precedence in all places within the borough, and in boroughs which return a member or members to serve in Parliament, other than the town of Berwick-upon-Tweed, and other than cities and towns which are counties of themselves, shall be the returning officer at all such elections; and in case the mayor shall at the time when he shall be required to perform the duties of such returning officer be dead, absent, or otherwise incapable of acting, or in case there shall be no mayor, the council of such borough shall forthwith elect(2) one of the aldermen to be the returning officer for such borough in the place of the mayor being so dead, absent, or otherwise incapable: Provided always, that in every case where there shall

Proviso, in case more than one mayor.

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(1) The words "in case of a prosecution, unless the same be carried on without wilful delay," which are in s. 11 of 2 Geo. 2, c. 14, are omitted in this section. See *Petrie* v. *White*, 3 T. R. 5.

Semble, that the party is still liable to be prosecuted as for an offence at common law: see Willes, 425, n. (*a*).

(2) See ante, note (3) to s. 49, p. 80, as to there being no provision made for the assembling of the council for the purpose of acting. See s. 69.

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be more than one mayor within the boundaries of any borough, as the same are or shall at any future time be settled in so far as respects the election of members to serve in Parliament, the mayor of that borough, to which the writ of election shall be directed, shall be the returning officer.

Power to council to appoint town-clerk, treasurer, and other officers;

LVIII. And be it enacted, that the council of every borough, on the ninth day of November in this present year, shall appoint a fit person, not being a member of the council, to be the town-clerk of such borough, who shall hold his office during pleasure (1);

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(1) The borough of Tewkesbury, until the 1st May, 1836, had its own quarter sessions. W. held the offices of town-clerk and clerk of the peace; W. having resigned, the town-council, by a resolution on the 20th of July, 1836, appointed S. town-clerk; but no step was taken towards investing him with the office; at an adjourned meeting of the council on the 25th July, 1836, a resolution was passed rescinding that of the 20th July; and by another resolution T. was appointed town-clerk. On a motion for a *quo warranto* information against T. for exercising this office:—*Held*, that the office of town-clerk being determinable *at pleasure*, the resolutions rescinding that of the 20th of July, and appointing T. town-clerk, were a sufficient removal of S. from that office; and that, the office not being full, T. was legally appointed. *Reg.* v. *Thomas*, 8 A. & E. 183.

In the above case it was assumed, from the state of the affidavits, that due notice had been given to the prosecutor S., and to the councillors, under s. 69 of this Act; the note to which see post, page 131.

It is hardly necessary to state, that an infant cannot be appointed to any of these offices, being offices of public and pecuniary trust. *Claridge* v. *Evelyn*, 5 B. & Ald. 81; see Com. Dig., Enfant, C. 1; and *Rex* v. *Carter*, Cowp. 220, and cases there cited.

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and in any borough may be an attorney of one of his Majesty's superior Courts at Westminster, any law, statute, charter, or usage to the contrary notwithstanding; and the council of every borough shall in every year(2) appoint another fit person, not being a member of the council, to be the treasurer of the borough, and also such other officers as have been usually appointed in such borough, or as they shall think necessary for enabling them to carry into execution the various powers and duties vested in them by virtue of this Act, and may from time to time discontinue the appointment of such officers as shall appear to them not necessary to be re-appointed; and shall take such security for the due execution of his office by any such town-clerk, treasurer, or other officer, as the said council shall think proper(3); and shall order to be paid to the mayor, and

and to take security for due discharge of their official duties.

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(2) The words "in every year" are repealed (as to the treasurer) by 6 & 7 Vict. c. 89, s. 6, which provides that the council, on the 9th of November after the passing of that Act, shall appoint a fit person, not being a member of the council, to be the treasurer of such borough, to hold his office during the pleasure of the council for the time being: in case of a vacancy by death, &c., the council to appoint a successor within twenty-one days.

A person appointed to act as overseer for collecting borough rate in a portion of a parish, under 7 Will. 4 & 1 Vict. c. 81, s. 3, post, is not one of the borough officers who are to be appointed "in every year," under this section. Whether such an officer can legally be appointed for an indefinite time, during the pleasure of the council, *quære;* but there is no law limiting the appointment to one year. *Mayor &c. of Birmingham* v. *Wright*, 16 Q. B. 623.

(3) See *Mayor &c. of Berwick* v. *Oswald*, 1 E. & B. 295,

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Salaries.

to the town-clerk and treasurer, and to every such other officer to be employed as aforesaid, such salary or allowance(4) as the said council shall think rea-

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S. C., in error, 3 E. & B. 653, in note to 6 & 7 Vict. c. 89, s. 6, post.

(4) It will be seen that, in all cases, the mayor of a borough may be paid such salary or allowance as the council may think reasonable. Previously to the passing of this Act, the mayors were generally allowed salaries, as a remuneration for the labours and expenses necessarily incident to the mayoralty. In some cases, doubtless, these sums may have been too large; but since the new councils have been elected, a contrary extreme has been generally adopted; and in many boroughs no salary or allowance of any kind is made to the mayor. In the larger boroughs, where no police magistrate has been appointed under this Act, the duties devolving on the mayor are of a somewhat onerous description; and it is hardly to be expected, except, perhaps, in time of political excitement, that professional men, or merchants, or other persons of respectability in the borough, will give up gratuitously their time and labour, to the sacrifice or serious detriment of their private affairs, without, at all events, some allowance for the expenses which are necessarily incident to such an office.

The town-clerk is to be paid by a salary out of the borough fund (s. 92): and however inadequate that may be, he cannot maintain an action against the corporation for payment in respect of the discharge of any of the duties cast upon him by this statute, or by the Reform Act; nor can he do so, though he may be in the receipt of no stated salary as town-clerk, and though the then corporation, in several years before the passing of this Act, had made payments to him for the performance of the duties (such as making out lists, &c.) imposed by the Reform Act. *Jones* v. *Mayor of Carmarthen*, 8 M. & W. 605.

(See 6 Vict. c. 18, s. 55.)

The town-council of the borough of Swansea resolved "that the sum of 100 guineas be fixed as the salary of the

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sonable; and in case of a vacancy in any such office as aforesaid by death, resignation, removal, or other-

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town-clerk, for his attendance on the business of the council and committees in Swansea, and that he be paid the usual charges and expenses in defending or bringing actions." It was held that the salary of 100 guineas was to be considered as remunerating him for *all* business he might do for the corporation, except bringing and defending actions; and that the Master was right, on the taxation of his bills for business done for the corporation, in disallowing charges for matters which as town-clerk it was his duty to perform. *Thomas* v. *Mayor &c. of Swansea*, 11 M. & W. 83. See *Stevenson* v. *Mayor &c. of Norwich*, 1 Q. B. 154.

The council of a borough passed a resolution prescribing the duties of the town-clerk, and fixing his salary for the discharge of such duties at 200*l*. Amongst other functions, he was "to act as the professional adviser of the mayor and council in the business of the council;" and he was to "be paid the usual professional charge for conducting or opposing bills in Parliament, conducting actions or suits at law or in equity, and preparing leases, conveyances, or securities;" and to "be paid all travelling and other expenses out of pocket." A town-clerk, who was an attorney, was subsequently appointed.

Payment of a borough-rate being resisted by a township within the borough, with an intimation that the overseers would not pay anything except under legal obligation, the council directed their finance committee to take such proceedings as they might deem expedient for enforcing payment, and maintaining the validity of the rate; the committee were likewise authorised to give bonds of indemnity to overseers and others employed in the collection. The committee directed the town-clerk to prepare a bond of indemnity to the overseers of the above township, under counsel's advice. The bond was prepared, and objected to by the overseers. The town-clerk, under the direction of the committee, went to London, and attended conferences between counsel for the overseers and for the corporation, with a view to an arrange-

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wise, the council of such borough may appoint another fit person in the place of the person so making

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ment. Finally, the form of the rate was altered: proceedings were taken on behalf of the council to compel payment, and the rate was levied. The town-clerk then delivered a bill to the corporation, including charges for instructing and advising with counsel upon the bond of indemnity, and upon the forms of rates; correspondence and conferences with the solicitor for the overseers on the subject of the rate; expenses and loss of time in proceeding to London for the purpose of attending the conferences, in advising on several occasions with counsel, and in journeys to Wakefield and Manchester for the purpose of conferring with the clerks of the peace and town-clerks of those boroughs upon the proper forms of rates. The services had been performed under the instructions of the finance committee. The committee ordered payment of the charges, and they were paid. On certiorari, bringing their order before this Court, under stat. 7 Will. 4 & 1 Vict. c. 78, s. 44, it was held,—1st, that the charges, so far as regarded business done in the direct course of settling a dispute, might properly be allowed by the corporation, as not covered by the salary given for the performance of the ordinary duties of town-clerk; and that such charges were payable out of the borough fund.—2ndly, it was held to be no objection, that the order was made not by the council generally, but by a finance committee having their sanction; nor, at least after payment, that there was no retainer under seal for the extra services. And the Court, after these rulings, ordered the bill to be taxed conformably with them, by the Master. *Reg.* v. *Prest*, 16 Q. B. 32.

The appointment by a corporation of an attorney to conduct their suits or manage their affairs, must be under the common seal; otherwise he cannot recover against the corporation, even though they had by resolution expressly directed the business to be done. *Arnold* v. *Mayor &c. of Poole*, 4 Man. & G. 860; 5 Scott N. R. 741. So, an agreement by a corporation with one of its officers for an increase of the salary of an office retained by him, as compensation for

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such vacancy: Provided, that the town-clerk and treasurer shall not be the same person (5). Proviso.

LIX. And be it enacted, that the treasurer of any borough shall pay no money on account of the mayor, aldermen, and burgesses of such borough, *save* only in such case as is provided by this Act, or upon the order in writing of the council (1), signed by three or more members of the council, and countersigned by the town-clerk of such borough, or by order of the court of sessions of the peace for the borough, or of a justice of the peace acting in and for the borough in the discharge of his judicial duty, in such case as is provided by this Act, or in such case as a court of sessions of the peace for any county, or a justice of the peace acting in and for a county in the discharge of his judicial duty, may make an order for the payment of money on the treasurer of such county, or for the payment of the salaries granted to any recorder or police magistrate as hereinafter provided*. Treasurer to pay no money but by order of council, except as provided by this Act.

* § 19 & 103.

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the loss of another office of which he was deprived under this Act, though upon an executed consideration, is not binding on the corporation if not under the common seal. *Reg.* v. *Mayor &c. of Stamford*, 6 Q. B. 433. See also *Cope* v. *Thames Haven Dock and Railway Company*, 3 Exch. 849.

(5) The above proviso appears to be unnecessary, as the council are required by the words of the section to appoint a fit person town-clerk, and "*another* fit person" treasurer.

(1) By 7 Will. 4 & 1 Vict. c. 78, s. 44, orders for the payment of money out of the borough fund may be removed into the Court of Queen's Bench by *certiorari*: see, in note to that section, *Reg.* v. *Mayor &c. of Bridgwater*, 10 A. & E. 281; and *Reg.* v. *Paramore*, Id. 286.

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Officers to account, &c., according to the orders of the council.

LX. And be it enacted, that every town-clerk, treasurer, or other officer appointed by the council as aforesaid, shall, at such times during the continuance of his office, or within three months after the expiration of his office, and in such manner as the said council shall direct, deliver to the council, or to such person as they shall authorise for that purpose, a true account in writing of all matters committed to his charge by virtue of this Act, and also of all monies which shall have been by him received by virtue or for the purposes of this Act, and how much thereof shall have been paid and disbursed, and for what purposes, together with proper vouchers for such payments, and also a list of the names of all such persons as shall not have paid the monies due from them for the purposes of this Act and of the amount due from each of them; and every such officer shall pay all such monies as shall remain due from him to the treasurer for the time being, or to such person as the said council shall authorise to receive the same; and if any such officer shall refuse or wilfully neglect to deliver such account, or the vouchers relating to the same, or such list as aforesaid, or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said council, or to such person as they shall authorise, within three days after being thereunto required by notice in writing under the hands of any three or more of the said council, to be given to or left at the last place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said council, or to such other person as aforesaid, respecting the same, then and in every such case, upon com-

Summary remedy against officers for not accounting, &c.

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plaint made on behalf of the said council, by such person as they shall authorise for that purpose(1), of any such refusal or wilful neglect as aforesaid, to any justice of the peace(2) for the county or other jurisdiction wherein such officer so refusing or neglecting shall be or reside, such justice is hereby authorised and required to issue a warrant under his hand and seal for bringing such officer before any two justices of the peace for such county or jurisdic-

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(1) It seems that this person must be specially authorised by the council to make the particular complaint, before the warrant can be obtained. It will be recollected that at least three or four days must elapse (see s. 69, as to notice of meetings of the council) before the council can meet. *Semble*, that the treasurer, who is the officer to receive the borough money, would not be a person *ex officio* authorised to make the complaint within the meaning of this section. The waiting for three or four days, it is evident, in cases of persons likely to be defaulters in paying money, might often be productive of serious injury. Cases have occurred, where, had not the town-clerk and treasurer taken upon themselves to make the complaint before the justices, the borough fund would have been very considerably defrauded by the bankruptcy or the absconding of a high constable or the collectors of the borough rate.

It would have been much better had the mayor been authorised to issue the warrant upon the complaint of either the treasurer or the town-clerk.

(2) Under this section, and also under s. 65 of this statute, it has been held that *county* magistrates may determine complaints against corporate officers wilfully neglecting or refusing to give up books, papers, &c.; and this, though the officers be living within the precincts of the borough, and such borough has a commission of the peace: *In the matter of the Justices of Gateshead*, reported in note to 6 A. & E. 550.

Quære, whether, in the case of a borough having a *separate*

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tion(3); and upon the said officer appearing, or not being found, it shall be lawful for such justices to hear and determine the matter in a summary way; and if it shall appear to such justices that any monies remain due from such officer, such justices may and they are hereby authorised and required, upon non-payment thereof, by warrant under their hands and seals, to cause such monies to be levied by distress and sale of the goods of such officer; and if sufficient goods shall not be found to satisfy the said monies and the charges of the distress, or if it shall appear to such justices that such officer has refused or wilfully neglected to deliver such account, or the vouchers relating thereto, or such list as aforesaid, or that any books, papers, or writings relating to the execution of this Act remain in the hands or in the custody or power of such officer, and that he has refused or wilfully neglected to deliver the same, or to give satisfaction respecting the same

If no sufficient distress, &c.

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court of quarter sessions, a county magistrate would have any authority to act; at all events, if the officer so refusing reside within the borough jurisdiction.

Same remedies against officers removed.

See post, s. 65, giving power to the council to remove every *ministerial* or *executive* officer in office at the time of the first election of councillors, and giving the same remedy as is provided by this section, against any such officer not delivering up monies, goods, &c., when required. See *Tindal*, C. J.'s, judgment in *Baylis* v. *Strickland*, 1 Man. & G. 591; also note (2) to s. 65, p. 113.

(3) This is substantially a civil and not a criminal proceeding, and the arrest cannot therefore be made on a Sunday. Nor would the detention be made legal by the delivery to the gaoler, after the arrest, of another warrant upon the same conviction. *Eggington's case*, 2 E. & B. 717.

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as aforesaid, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county or jurisdiction where such offender shall be or reside, there to remain without bail until he shall have paid such monies as aforesaid, or shall have compounded with the said council for such monies, and shall have paid such composition in such manner as they shall appoint (which composition the said council are hereby empowered to make and receive), or until he shall have delivered a true account as aforesaid, together with such vouchers and *lists** as aforesaid, or until he shall have delivered up such books, papers, and writings, or have given satisfaction in respect thereof, to the said council, or to such other person as aforesaid, as the case may be: Provided always, that no person so committed shall be detained in prison, for want of sufficient distress only, for a longer space of time than three calendar months; provided also, that nothing in this Act contained shall prevent or abridge any remedy by action against any such officer so offending as aforesaid, or against any surety for any such officer, but such officer shall not be sued by action and also proceeded against in a summary manner by virtue of this Act for the same cause(4).

* Semble, "list."

Proviso.

Remedy by action reserved.

LXI. And be it enacted, that in the city of Oxford, in the town of Berwick-upon-Tweed, and in the counties of the cities of Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lichfield,

Councils of cities and towns which are counties to name a sheriff.

(4) See *Mayor &c. of Lichfield* v. *Simpson*, 8 Q. B. 65.

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Lincoln, Norwich, Worcester, and York, and in the counties of the towns of Caermarthen, Haverfordwest, Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Poole, and Southampton, the council shall on the first day of November (1) in every year appoint a fit person to execute the office of sheriff, with the like duties and powers (2) as the sheriff or the person filling the office of sheriff in the said town and counties respectively would have had if this Act had not passed; and every person who, at the time of the passing of this Act, shall hold the office or execute the duties of sheriff in the said town and counties respectively, shall continue to hold and execute the same until the first appointment of

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(1) This day is altered to the *ninth* of November, by s. 5 of 6 & 7 Will. 4, c. 105, which provides that the appointment of the sheriff is to take place "immediately after" the election of the mayor on that day—(see s. 69); and that every sheriff so appointed is to hold his office until the appointment of his successor.

(2) Some of the places named in this section had no sheriffs before the passing of this Act. The sheriff of Oxfordshire had the execution of writs from the superior Courts in the city of Oxford; the bailiffs of the city of Oxford, there being at that time no sheriff of the city, executing only the writs from the two city courts. It has been decided, that the person appointed sheriff of the city of Oxford under this section has not the execution in Oxford of writs from the superior Courts, but that he has merely the powers which the two bailiffs of the city had before. The power to execute such process still remains with the sheriff of the county, upon whom the duty devolved before the passing of this Act. *Grainger* v. *Taunton*, 3 Bing. N. C. 64.

By 5 & 6 Vict. c. 104, s. 8, the office of sheriff is declared not to be an office of profit within s. 28 of this Act.

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a sheriff therein under the provisions of this Act and no longer.

LXII. And be it enacted, that the council o every borough in which a separate court of quarte sessions of the peace shall be holden, as is hereinafte provided *, shall, within ten days next after the gran of the said court shall have been signified to th council of such borough, appoint a fit person (1), no

(1) It will be seen that any "fit person," not being an a derman or councillor, may be appointed coroner; no qualif cation by residence, estate, or otherwise, being required f the holding of this office.

The council of the borough of Wigan having petitioned f the grant of a separate court of quarter sessions, under 103, received a letter from the secretary of state, statin that the crown had made the grant; and within ten day after the receipt of that letter, but before the grant had a tually passed the great seal, the council appointed R. corone of the borough, not under seal. He assumed and exercise the office, and was recognised as coroner by the counc repeatedly, and particularly within ten days after the actu grant of the quarter sessions had been received by the cou cil. Upon a *quo warranto* against R., the Court held, tha even if his original appointment was informal, as being mad too soon, it was made valid by the subsequent recognitio *Reg.* v. *Grimshaw*, 10 Q. B. 747.

A coroner appointed under this section does not hold *corporate office* within the meaning of the stat. 9 Anne, c. 2 (App., post); and therefore, upon judgment of ouster again him in a *quo warranto*, the relator is not entitled to cos under the 5th section of that Act. *Reg.* v. *Grimshaw*, Dowl. & L. 249. See also note to 6 & 7 Vict. c. 89, s. 5, pos

See post, 6 & 7 Will. 4, c. 105, s. 6, by which the corone in case of illness or unavoidable absence, is empowered t appoint a deputy. See also note to s. 103 of this Act, as t the *general power* to appoint a deputy.

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being an alderman or councillor, to be coroner of such borough, so long as he shall well behave himself in his office of coroner, and shall fill up every vacancy of the office of coroner of the borough by death, resignation, or removal, within ten days next after such vacancy shall have occurred, and none thereafter shall take any inquisition which belongs to the office of coroner within such borough save only the coroner so from time to time to be appointed; and every such coroner, for every inquisition which he shall duly take within such borough, shall be entitled to have the sum of twenty shillings, and also the sum of ninepence for every mile exceeding two miles which he shall be compelled to travel from his usual place of abode to take such inquisition, to be paid by the treasurer out of the borough fund of such borough, by order of the Court of quarter sessions for such borough(2).

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(2) In accordance with this provision, the coroner lays his account at each quarter sessions before the recorder, who, in the great majority of instances, is wholly ignorant of the matters upon which he makes his order, and has little opportunity of examining or ascertaining whether the inquests have been "*duly taken*," or otherwise.

The court of quarter sessions in counties, being differently constituted from that in boroughs, which consists now of the recorder alone, can exercise a sufficient superintendence over such matters, on which they have the sole power of deciding. Thus, where the court of quarter sessions had refused to allow a coroner's charge for a particular inquest, considering that it had been unnecessarily taken, there being no ground for supposing that the deceased had died any other than a natural death, though the death had been sudden, the Court of King's Bench refused an application for a mandamus, the question being one for the judgment of the court of quarter sessions.

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LXIII. And be it further enacted, that on or before the first day of February in every year after

Coroners to make returns to Secretary of State.

Rex v. *Justices of Kent*, 11 East, 229. It would perhaps have been better, in the case of boroughs, had the order been directed to have been signed by the mayor, after an examination of the accounts, &c., by him and the council, or by some smaller number of persons.

Some accounts, it will be seen, are to be laid by the coroner before the council; for by 7 Will. 4 & 1 Vict. c. 68 ("An Act to provide for payment of the expenses of holding coroners' inquests"), the town-council are to make a schedule of fees, allowances, and disbursements, which, on the holding of any inquest on any dead body, may be paid by the coroner (other than fees to medical witnesses under the statute 6 & 7 Will. 4, c. 89, which is "An Act to provide for the attendance and remuneration of medical witnesses at coroners' inquests").

By sect. 3, also, of the above-mentioned statute, 7 Will. 4 & 1 Vict. c. 68, "every coroner of any borough shall, within four months after holding any inquest, cause a full and true account *of all sums paid by him* under the provisions of this Act, including as aforesaid, to be laid before the town-council of such borough; and all such accounts shall be accompanied by such vouchers as under the circumstances may to such justices or council respectively seem reasonable; and such justices or council respectively may, if they shall think fit, examine the said coroner on oath as to such account; and on being satisfied of the correctness thereof, such justices or council respectively shall make an order on the treasurer of the said county, riding, division, or district, or of the said borough (as the case may be), for payment to the said coroner, not only of the sum due to him on such account, but also of a sum of six shillings and eightpence for every inquest holden by him as aforesaid, *over and above all other fees and allowances to which he is now by law entitled;* and the treasurer of any county, riding, division, or district on whom any such order shall be made, shall, out of the monies in his hands arising from the county rates, and the treasurer of any borough on whom any such order shall be made shall, out of the monies in his

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the passing of this Act, every coroner appointed in any borough shall make and transmit to one of his Majesty's principal secretaries of state a return in writing, according to such form as the said secretary of state from time to time shall direct, of all the cases in which he may have been called upon to hold an inquest touching the cause of death of any person during the year ending on the thirty-first day of December immediately preceding.

County coroners to act in other boroughs.

LXIV. And be it enacted, that in every borough in and for which no separate court of quarter sessions of the peace shall be holden, no person from and after the end of this present year shall take any inquisition which belongs to the office of coroner within such borough, save only the coroner for the county or district in which such borough is situ-

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hands on account of the borough fund, pay to the said coroner the sum mentioned in such order, without any abatement or deduction whatever; and every such treasurer shall, on passing his accounts, be allowed all sums which he shall pay in pursuance of any such order as aforesaid." By this section, therefore, the coroner has to lay before the council, not the amount of his fees, but only the account of sums paid by him to witnesses, &c., under the Act. It would seem, also, that under this section a borough coroner is entitled to 6*s.* 8*d.* on every inquest, over and above the 20*s.* directed to be paid as above. It may fairly be doubted whether the framer of this last-mentioned Act had any knowledge of the existence of this 62nd section of the Municipal Corporation Act, which is neither directly nor indirectly referred to in it.

See, as to the mileage, fees, &c., allowable to coroners, *Rex* v. *Justices of Oxfordshire*, 2 B. & Ald. 203; *Rex* v. *Justices of Warwickshire*, 5 B. & C. 431; *Reg.* v. *Justices of Carmarthenshire*, 16 L. J., M. C., 167; 2 New Sess. Cas. 679.

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ated(1); and the coroner of such county or district, for every inquisition which he shall duly take within any place or precinct within any such borough, shall be entitled to have such rateable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner, as for any other inquisition taken by him within such county(2): Provided always, that nothing in this Act contained shall extend or be construed to annul, diminish, or affect the authority of the lord high admiral, or of the commissioners for executing the office of lord high admiral of the United Kingdom for the time being, or of the judge of the High Court of Admiralty of England(3), as the lieutenant of the lord high admiral

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(1) See 6 & 7 Vict. c. 12, as to the holding of inquests where it is unknown in what place the deceased came by his death, or where he dies in another place than that in which the cause of death happened: and see *Reg.* v. *Ellis*, 2 Car. & K. 470.

(2) As to *county* coroners, their fees, accounts, &c., see now stat. 7 & 8 Vict. c. 92; and Jervis's Law of Coroners, 71.

(3) This proviso reserves to the High Court of Admiralty its authority to appoint coroners to act within the jurisdiction of the several ports, &c., "*as hath heretofore been done.*" (See also 7 & 8 Vict. c. 92, s. 25). On the general jurisdiction of the land-coroner over offences committed on the sea, it is observed by Hawkins, in Book 2, c. 9, that "it is laid down by some (citing Owen, 122; Moor, 829; 2 Hale, P. C. 54), that he may inquire of a felony committed on the arms of the sea, where a man may see from one side to the other; but by others who appear to be more accurate, that his power is confined to such parts of the sea, where a man standing on one side may see what is done on the other. But it seems to be agreed, that he hath no jurisdiction of offences committed on the *open* sea, between high and low water-mark, when the

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in the said Court, to appoint coroners to act within the jurisdiction of the admiralty in the several ports and havens and on the sea-coast of England, and to take inquisitions touching deaths happening within the said jurisdiction, as hath heretofore been done.

Council empowered to remove certain officers.

LXV. And be it enacted, that the council elected under this Act in any borough shall have power to remove from his office every bailiff, treasurer, or chamberlain, and every other ministerial or executive officer of such borough and body corporate (1) who shall be in office at the time of the first election of councillors under this Act; and every such bailiff, treasurer, or chamberlain, and every other ministerial or executive officer in such borough, shall continue to act in the same capacity as heretofore, and

Such officers to continue until removed.

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tide *is in;* but that he hath an authority over offences committed in such places when the tide *is out.*" See 3 Inst. 113; 5 Co. 107.

Where a man-of-war is lying in a port (for instance, within the harbour of Portsmouth and the liberties of the borough), the land-coroner is entitled to go on board and hold an inquest. It was so held in *Rex* v. *Solgard*, 2 Str. 1097, where a criminal information was granted against the captain of a man-of-war for refusing admittance to the land-coroner; and in answer to the argument urged on behalf of the defendant, that the Admiralty had a coroner of its own, the Court observed: "Though there have been a variety of opinions as to the Admiralty jurisdiction, yet it was never carried further than a pretence to a *concurrent jurisdiction.*" See also 4 Inst. 141. The land-coroner, it seems, may act in all such cases, if the Admiralty coroner have not previously held his inquest.

(1) As to what kind of offices fall within these words, see *Hall* v. *Mayor &c. of Swansea*, Dav. & M. 475; 5 Q. B. 526.

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to execute all the duties heretofore belonging to his office, and be entitled to have the same salaries, fees, and emoluments as he would have had if this Act had not passed, until he shall be removed from his office, and no longer, unless he shall be re-appointed according to the provisions of this Act; and every officer (2) who shall be in possession or receipt of any monies, goods, valuable securities, books, and papers belonging to or concerning the body corporate (3) whose officer he is shall deliver up and account for the same to the council of such body corporate appointed under this Act; and the council shall have the same remedy against such officer to recover the same as is hereinbefore provided in the case of officers ap-

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(2) The council elected under this Act have power to require the common crier, as an officer of the borough, to deliver up the town bell as part of the goods of the body corporate; such crier having been appointed by the old corporation, and having been removed by the new town-council: and in case of his refusal, he may be proceeded against by summary conviction in the manner pointed out by the 60th section. *Baylis* v. *Strickland*, 1 Man. & G. 591. In that case *Tindal*, C. J., in delivering the judgment of the Court, observed, that the enactment "*that the council shall have the same remedy*," &c., virtually incorporates into this section the whole course of proceeding pointed out by the 60th, as if it had been repeated here with such *variations* as are necessary to make it applicable to the subject-matter of this section.

(3) The Court of Queen's Bench refused a rule for a *mandamus* calling on the steward of Gateshead to deliver up documents, &c., to the corporation established under this statute, 5 & 6 Will. 4, c. 76; not being satisfied that Gateshead, though mentioned in schedule A., was a borough with a municipal corporation before the passing of the statute. *Rex* v. *Greene*, 6 A. & E. 549. See *Reg.* v. *Hopkins*, 1 Q. B. 161.

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pointed by such council: Provided always, that all the charters, deeds, muniments, and records of every borough, or relating to the property thereof, shall be kept in such place as the council from time to time shall direct, and the town-clerk for the time being shall have the charge and custody of and be responsible for the same (4).

Officers to receive compensation on removal;

LXVI. And be it enacted, that every officer of any borough or county who shall be in any office of profit (1) at the time of the passing of this Act,

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(4) In the case of *Rex* v. *Sankey*, 5 A. & E. 423, it was held that a town-clerk had a lien on papers of the corporation with respect to which he had done work as an attorney or solicitor, but not on such as he held merely as town-clerk. As to what charges a town-clerk is entitled to make, see notes to ss. 58 and 92; *Jones* v. *Mayor &c. of Carmarthen*, 8 M. & W. 605; *Thomas* v. *Mayor &c. of Swansea*, 11 M. & W. 83.

(1) The word "office" is not to be construed here in its strictly technical sense; it being evidently used as a word of much more extensive application, as is shewn by the other words of the section—"place, situation, employment, or appointment."

It has accordingly been held, that whenever a party has been removed from, or by dismissal from any office has incidentally lost, a place or employment of profit directly held of and under the corporate body, he is entitled to compensation under this section.

Thus, where a party, by losing the office of common or town-clerk, lost also the clerkship to the justices, which had been incident to the former office, it was held he was entitled to compensation for the loss of the emoluments derived from the place of clerk to the justices; and this, though he was reappointed town-clerk, and had, after A. B. had received the appointment of clerk to the justices, been appointed clerk of

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whose office shall be abolished, or who shall be removed (2) from his office under the provisions of

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the peace under this Act, by section 102 of which it is provided that a clerk of the peace shall not be appointed or continued clerk to the justices. *Reg.* v. *Mayor &c. of Bridgwater*, 6 A. & E. 339; 1 N. & P. 466.

See also the case of *Reg.* v. *Mayor &c. of Carmarthen*, 11 A. & E. 9; where, before the passing of this Act, A. had acted as clerk to the justices of a corporation, and though not formally appointed, had always been recognised and paid by the corporation; and, though the office was not named in the charter, it was held that, on his removal by the justices appointed under this Act, he was entitled to compensation; and the council having refused to give any, and the Lords of the Treasury having, on appeal, ordered an annuity of 66*l.* to be paid to him, the Court granted a *mandamus* requiring the corporation to execute a bond for the amount, according to the provisions of s. 67. See *Reg.* v. *Mayor &c. of Sandwich*, and the other cases cited below in note (3) to this section, which shew that the Lords of the Treasury had no jurisdiction to order the above compensation after the council had decided that the claimant was not entitled to any.

But where a *local Act* empowered the mayor, bailiffs, and burgesses of a borough to appoint, and *from time to time to remove*, a collector of harbour and quay duties paid to the mayor, &c. under the said Act; by which also they were empowered to allow the collector a salary *out of the said duties*, which duties were to be applied to no other purposes than those of the quay and harbour: it was held, that A. B., who had been appointed collector, with a salary, under the local Act, on being removed by the new town council, after the passing of the Municipal Act, was not entitled to any compensation under this section, not having been removed under the

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(2) *Semble*, a party who voluntarily resigns his office, though from apprehension of being removed, is not within these words: *Parr* v. *The Attorney-General*, 8 C. & F. 409.

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this Act, or who shall not be re-appointed as aforesaid, shall be entitled to have an adequate com-

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provisions of this statute. The council in fact were only administering (see post, s. 72) the powers of the local Act, by the provisions of which he was from time to time removable. *Reg.* v. *Corporation of Poole*, 7 A. & E. 730.

Quære, whether, looking to the authority by which A. B. was appointed, and the fund from which his salary was paid, he ever was an officer of the *borough* within this section? See infra, *Ex parte Harvey*, 7 A. & E. 739.

An attorney cannot, under this section, or under stat. 5 & 6 Vict. c. 111, s. 2, claim compensation for fees and emoluments which he derived from being employed by the justices of a division to prosecute offenders committed by them for trial, where the prosecutor did not employ another attorney. *Reg.* v. *Mayor &c. of Manchester*, 5 Q. B. 402. See post, 5 & 6 Vict. c. 111, s. 2, and the notes thereto.

A party is not deprived of his right to compensation, though he may have held his office by a *defeasible* title. Thus, where H. had in 1833 been elected town-clerk of Cambridge, *quamdiu &c.*, and had held the office up to January, 1836 (when he was removed by the new town council); but he had neglected to make the declaration required by 9 Geo. 4, c. 17: it was held, that as he had been town-clerk *de facto*, and had discharged the duties of the office, he was entitled to compensation. *Reg.* v. *Mayor &c. of Cambridge*, 12 A. & E. 702; 4 P. & D. 294; see also *Rex* v. *Parry*, 14 East, 549.

Where the steward of a borough, removed under the Act, had received a small annual sum for holding a corporation court, which sum, however, was paid by the sheriff, and not out of the borough fund, but he held the court *as steward;* it was held that compensation might be given to him in respect of the emolument. *Reg.* v. *Corporation of Norwich*, 8 A. & E. 633.

But the being appointed by a resolution of the corporation, at an annual salary, as *assistant* to the chamberlain of a borough, and being re-appointed to it on the election of a new chamberlain, will not confer on the holder an office with-

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pensation, to be assessed by the council, and paid out of the borough fund, for the salary, fees, and

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in the meaning of the Act; and on his place being discontinued by the town council, he is not entitled to any compensation under this section. *Ex parte Harvey*, 7 A. & E. 739; see also *Hawkins* v. *Newman*, 4 M. & W. 613.

An attorney of the sheriff's court at York, where a limited number only were allowed to practise, who paid a consideration for their privilege, was held not entitled to compensation under this section, by reason of the court having been thrown open to every attorney of the superior Courts at Westminster by section 119 of this Act; for this was not an *abolition* of or removal from an office. *Reg.* v. *Mayor &c. of York*, 2 Q. B. 847; 2 G. & D. 581.

Where A. had been appointed town-clerk nine days before the passing of this Act, and was removed on the 1st of January following:—Held, that he was entitled to a *nominal* compensation. But the Court, when compensation had been refused both by the council and by the Lords of the Treasury, would not, *under the above circumstances*, grant a *mandamus* to the council to assess a compensation. *Ex parte Lee*, 6 A. & E. 139.

The Court of Chancery has jurisdiction to prevent the town council of a borough from abusing this power of awarding compensation, notwithstanding the appeal here given to the Lords of the Treasury. See *Attorney-General* v. *Corporation of Poole*, 4 Mylne & Cr. 30, overruling the judgment of the Master of the Rolls in 2 Keen, 206, who appears to have thought that the remedy, by appeal to the Treasury, was intended to be *exclusive*. The effect of such a decision would be to deprive the Court of its jurisdiction in every case in which another remedy is given by statute, which is clearly not the case; the remedy *is cumulative*. See also *Attorney-General* v. *Aspinall*, 2 Mylne & Cr. 613; and *Parr* v. *The Attorney-General*, in the House of Lords, 8 Cl. & F. 409. And therefore, where the town council of a borough gave a bond to secure compensation out of the borough-fund to an officer, for the profits of offices some of which he continued to hold,

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emoluments of the office which he shall so cease to hold, regard being had to the manner of his appointment to the said office, and his term or interest therein, and all other circumstances of the case; and every person entitled to such compensation as aforesaid shall deliver to the town-clerk, or in case such person shall himself be town-clerk then to the treasurer of the borough, a statement under the hand of such person, setting forth the amount received by him or his predecessors in every year during the period of five years next before the passing of this Act on account of the salary, fees, emoluments, profits, and perquisites in respect whereof he shall claim such compensation, distinguishing the office, place, situation, employment, or appointment in respect whereof the same shall have been received, and containing a declaration that the same is a true statement according to the best of the knowledge, information, and belief of such person, and also setting forth the sum claimed by him as such compensation; and the town-clerk or treasurer, as the case shall be, shall lay such statement before the council, who shall take the same into consideration, and determine thereon; and immediately upon such determination being made the person preferring such claim, if he shall not himself be the town-clerk, shall be informed thereof by notice in writing under the hand of the town-clerk; and in case such claim

to deliver statement of claims.

Statement to be laid before council.

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this was held to be a breach of their public trust, cognizable in the Court of Chancery. *Parr* v. *The Attorney-General*, 8 C. & F. 409. See also *Attorney-General* v. *Corporation of Lichfield*, 11 Beav. 120.

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shall be admitted in part and disallowed in part, such notice shall specify the particulars in which the same shall have been admitted and disallowed respectively; and in case the person preferring such claim shall think himself aggrieved by the determination of the council thereon, or in case one-third of the members of the council shall subscribe a protest against the amount of compensation allowed by the determination of the council as excessive, it shall be lawful for the person preferring such claim, or any member of the council who shall subscribe such protest, to appeal to the Lords Commissioners of His Majesty's Treasury (3), who shall thereupon

Appeal to the Lords of the Treasury.

(3) The appeal to the Lords of the Treasury is confined wholly to the question of the *amount* of compensation. But in considering that question, they are at liberty to inquire into all the circumstances attending the appeal, and thereupon to make such order as may seem to them just. See the case of *Reg.* v. *Mayor &c. of Norwich*, 8 A. & E. 633. There the steward of a borough had been removed under this Act, and had claimed compensation as for an office *for life*, but the town council had allowed compensation as for an *annual* office only. The Lords of the Treasury, on appeal, and on hearing the facts of the case, from which it appeared that though the office was not *legally* holden for life, yet it had usually been so, and that the appointment was accepted on that understanding, awarded compensation as for the loss of an office for life. The Court of Queen's Bench held, that the Lords of the Treasury were not bound to consider only the *legal* tenure, but might, referring to all the circumstances of the case, award compensation as for an office held for life.

Semble, that the Court of Queen's Bench cannot review the decision of the Lords of the Treasury as to *the amount* of compensation. Id. 633. See also *Reg.* v. *The Lords of the Treasury*, 10 A. & E. 374.

In *Reg.* v. *Mayor &c. of Norwich*, 3 Q. B. 285; 2 G. & D.

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make such order as to them shall seem just; and

605, the Court held, in accordance with the above decisions, that where A. B. had been dismissed from his office of town-clerk, and had *incidentally lost* (*quære*, whether the affidavits quite bore out this fact) the solicitorship to the charity trustees of the borough, he was entitled to compensation for the loss of this latter employment, and that, as the question of the *amount* (for the loss of both) had been fixed by the Lords of the Treasury, the rule for the *mandamus* to execute the bond, under s. 67, must be made absolute.

It is now clear, therefore, that the Lords of the Treasury have not any jurisdiction to inquire whether an officer has or has not been removed *for sufficient cause* within this section; or whether the office is one within the meaning of the Act, so as to entitle the person removed to *any* compensation. Accordingly, where a town-clerk had been re-appointed, and afterwards dismissed, and had applied to the town council for compensation, which was refused, and the Treasury, on appeal, had also refused compensation, being satisfied, on inquiry, with the cause of dismissal—the Court of Queen's Bench granted a *mandamus*, calling on the council to assess compensation to the claimant, notwithstanding the decision of the Lords of the Treasury, whose order and affirmation of what had been done by the town council were not of any effect, they having no jurisdiction to inquire into such a matter. *Reg.* v. *Corporation of Warwick*, 10 A. & E. 386; *Reg.* v. *Corporation of Newbury*, Ibid.; see also *Reg.* v. *The Lords of the Treasury* (*re Tibbets*), 10 A. & E. 374. These cases were confirmed by *Reg.* v. *Mayor &c. of Newbury*, 1 Q. B. 751, 1 G. & D. 388, where, after the refusal by the town council of compensation to a removed officer, on the ground that he had been removed for a sufficient cause: the Lords of the Treasury had, on appeal to them, awarded compensation on the ground of the insufficiency of the cause, the Court of Queen's Bench refused to enforce by *mandamus* the payment of such compensation; nor would the Court try, on a return to such a writ of *mandamus*, *the sufficiency of the cause*, the claimant being bound in the first instance to proceed against

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such order, signed by three or more of such Lords

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the corporation by *mandamus*, to compel them to restore him or give him compensation for removal.

The above cases were again reviewed, and the principle of them confirmed and extended, in the case of *Reg.* v. *Mayor &c. of Sandwich*, 2 G. & D. 28; 2 Q. B. 895 (affirmed on error in the Exchequer Chamber, 16 L. J., Q. B., 432). In this case A. B. had been removed from the office of town-clerk and other offices of profit incident thereto, and had made a claim for compensation. The town council, having duly taken the claim into consideration, had resolved that he was not entitled to any. On appeal to the Lords of the Treasury, they had held him entitled to *some* compensation, and had awarded him an annuity of 60*l.* a year, with which also A. B. being dissatisfied, applied to the Court of Queen's Bench for a *mandamus* to the council, to affix their seal to a bond, securing to him the amount of his original claim, 7600*l.*; which it was, amongst other things, insisted he was entitled to, on the ground of such claim having been *admitted* within the proviso of this section, through the council not having determined on it; it being contended, on his behalf, that the council had only to consider the amount, which it was clear they had not done.

Lord *Denman*, in delivering the judgment of the Court, observed on this latter point—"We are of opinion that the council must be considered as having *determined* on the claim. It is quite clear that the claim, as submitted to the council, embraced, and could not but embrace, the question *both of right and of amount*; and whatever may be thought of the question of the jurisdiction of the Lords of the Treasury, it is equally clear that, in the first instance, the statute confers on the town council the right to enter into both questions; such a right is necessarily implied from the fact, that in every case, in the first instance, both these questions must be involved in the claim made. The officer alleges his right to be compensated, and he states the amount to which, by the calculations prescribed by the Act, he thinks he is entitled. This complex claim, then, is, by the statute, to be made to

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Commissioners, shall be binding on all parties: Provided always, that if the council shall not deter-

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the council, and this of course they are to consider. * * * As we have before observed, that claim presents two matters for their consideration: if they decide in favour of the applicant as to the right, it becomes necessary to go on to consider the amount, and, in that case, a neglect to proceed further to that consideration would bring the case within the proviso; but an adverse decision on the right amounts to a determination on the *whole* claim; it in fact disposes of the whole."

On the question of the jurisdiction of the Lords of the Treasury to inquire into the *right* to compensation, Lord *Denman* added—"In two cases*, the *Warwick* and the *Newbury*, where the applicant had been continued, or re-appointed, and then dismissed from his office, we have held that the Lords of the Treasury have no jurisdiction to inquire into or decide on the *right* to compensation; that their jurisdiction was confined to settling disputes as to the *amount;* and, although the applicants had there been themselves the parties to bring the question of *right* before them, we did not think them thereby precluded from agitating the same question before this Court, which we have held to be the only proper tribunal to decide it. On the one hand, those decisions are said to govern the present case; on the other, that they do not apply, *but are confined to cases arising under the last proviso in the section;* and upon this point we have entertained some doubt; but, upon consideration, we think there is the same limit to the appellate powers of the Lords of the Treasury *under both parts of the section.*" See also *Reg.* v. *Mayor &c. of Harwich*, 2 Q. B. 909.

* Ante, p. 122.

In the above case of *Reg.* v. *Mayor &c. of Sandwich*, the Court, although they recognised and adhered to the principle established in the cases cited above, thought that there were grounds in the particular case for granting a *mandamus* to the town-council, commanding them to make compensation to the claimant. The writ issued accordingly, and the council thereon assessed 60*l.* per annum; whereupon he appealed to the Lords of the Treasury, who awarded him 112*l.* per

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mine on such claim within six calendar months (4) after the aforesaid statement shall be delivered to

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annum. The council refused to execute a bond for this amount, and the claimant thereupon obtained another *mandamus*, reciting all the above facts, and commanding them to execute such bond. They returned to this writ—first, that the claimant did not hold certain of the offices mentioned in it; secondly, that he had made a former appeal to the Lords of the Treasury against the original disallowance by the town-council, and that the Lords of the Treasury had then assessed only 60*l.* per annum. And it was held by the Court of Queen's Bench, and on writ of error by the Court of Exchequer Chamber, that by the assessment of the 60*l.* per annum, under the former *mandamus*, which was admitted by the present return, the council were estopped from denying that the claimant held the offices mentioned in the writ; and that, although the Lords of the Treasury had no jurisdiction to entertain the *first* appeal, when the claim had been altogether disallowed by the council, they had jurisdiction to entertain the *second*, in which the only question was one of amount, and their award upon it was conclusive. *Reg.* v. *Mayor &c. of Sandwich*, 10 Q. B. 563, 571.

A Treasury order for compensation under this section is not necessarily bad because it directs the compensation to be calculated from a by-gone time; for, under ss. 66 and 67, the compensation may be distributed over a number of years, and may consist partly of a gross sum for arrears. But such order is bad, and a nullity, if on the face of it, or by comparison with the Treasury minute directing it to issue, it appear that the compensation is partly given for a period during which the party still held the office. *Reg.* v. *Mayor &c. of Lichfield*, 16 Q. B. 781.

(4) Though the claim may be imperfectly stated, yet, if the town-council neglect to determine respecting it within six months, as here provided, they will be concluded, such claim will be considered as admitted, and the Court will direct them to execute a compensation bond.

In the case of *Reg.* v. *Mayor &c. of Swansea*, 11 A. & E. 66,

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the town-clerk or treasurer, as the case shall be, such claim shall be considered as admitted: Provided also, that it shall not be lawful for any member of the council to subscribe such protest as aforesaid except within such period of six calendar months: Provided also, that the person preferring such claim, if any member of the council shall so require, upon receiving notice in writing signed by the town-clerk, unless such person shall himself be town-clerk, in which case no such notice shall be requisite, shall from time to time attend at any meeting or adjourned meeting of the council for the investigation of such claim, and then and there, upon his oath or solemn affirmation, to be taken or made before the mayor (who is hereby authorised to administer the same), shall answer all such questions as shall be asked by any member of the council touching the matters set forth in the statement subscribed by such person as aforesaid, and produce all books, papers, and writings in his pos-

Claimant to attend before council and answer on oath.

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it was alleged, in answer to a rule for a *mandamus* to execute such compensation bond, that the statement of the profits made by the applicant under this section did not shew the yearly amounts for five years next before the passing of the Act, but only an average down to the end of 1834; and that the applicant had another person joined with him in the office, who had made no claim. But the Court held, that the above objections, though they might have afforded good grounds for opposing the claim, did not render it a *nullity;* and that consequently the council, not having taken any notice of it within the six months, were concluded. Any determination, however, by the council, whether well or ill founded, will prevent the operation of this proviso. See Lord *Denman's* remarks above cited, in *Reg.* v. *Mayor &c. of Sandwich*, p. 123.

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session, custody, or power relating thereto: Provided also, that every such officer who shall be continued in or re-appointed to such office under the provisions of this Act, and who shall be subsequently removed from such office for any cause other than such misconduct (5) as would warrant removal from any office held during good behaviour, shall be entitled to compensation in like manner as if he had been forthwith removed under the provisions of this Act and had not been continued in or re-appointed to such office.

Proviso as to re-appointed officer being removed.

LXVII. And be it enacted, that the sum payable to any person as such compensation as aforesaid shall be secured to such person by bond or obligation under the common seal of the borough out of whose funds the same shall be payable, in a sufficient penalty, conditioned for the payment to such person, his executors, or administrators, or assigns, of such sum, with all arrears thereof (if any) accrued due before the date of such bond; and such bond or obligation shall be prepared and executed at the expense of the borough fund, and delivered to the person entitled to such compensation as soon as conveniently may be after the amount thereof

Compensation to be secured by bond under common seal.

(5) *Semble*, that, to justify the removal of a corporate officer, there must be misconduct specially in the execution of his particular office; and that a charge of misconduct (containing no imputation of improper motives) in the management of a Chancery suit, or other duties which he may have performed for the corporation as their solicitor, but which are not necessarily in any way connected with his office, is insufficient. See *Reg.* v. *Mayor &c. of Newbury*, 1 G. & D. 394; 1 Q. B. 751.

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shall have been admitted as aforesaid by the council
* § 66. of the borough*: or shall have been determined, in the event of such appeal as aforesaid, by the order of the said Lords Commissioners (9).

Reservation of certain pensions and allowances.

LXVIII. And be it enacted, that all pensions and allowances granted on or before the fifth day of June in this present year, by the corporate body named in the said schedules (A.) and (B.) in conjunction with any borough, to any retired officer or servant, or to the widow or child of any officer or servant, and all stipends and allowances which during seven years next before the said fifth day of June have been usually paid and granted to the minister or late minister of any church or chapel (1),

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(9) See the cases cited in the notes to s. 66. The writ of *mandamus* to pay instalments due on such a bond should, it seems, be directed to the town council, as being the body who have the control over the corporate funds. And it must require payment to be made out of the *borough fund*, not out of the rates. And the objection, that the writ requires payment out of a wrong fund, may be made in answer to a peremptory *mandamus*, or even to a rule for an attachment for disobedience to a peremptory *mandamus*. *Reg.* v. *Mayor &c. of Poole*, 1 Q. B. 616; 1 G. & D. 728. The application for a *mandamus* to compel the execution of the bond need not shew the form of the bond required to be executed. Per Lord *Denman*, C. J., *Reg.* v. *Kendal*, 1 Q. B. 386.

The council cannot order the payment out of the borough fund of *interest* on a bond given under this section. *Reg.* v. *Mayor &c. of Warwick*, 8 Q. B. 926.

(1) In *Reg.* v. *Mayor &c. of Liverpool*, 8 A. & E. 176, Lord *Denman* observed, that a *liberal construction* is to be given to such enactments. It is sufficient, therefore, under this section, that the claimant has performed the duties of *minister*

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or to the master or usher of any school, or to the governor or master of any hospital within such borough, and all charitable allowances (2) which have been usually paid as aforesaid to the inmates of any almshouses by such corporate body, shall be secured, as soon as conveniently may be after the passing of this Act, to every person entitled or accustomed to have and receive the same, by bond or obligation, under the common seal of the borough, out of whose funds the same shall be payable, in a sufficient penalty, conditioned for the payment to such person, his executors and administrators, of such pension, stipend, or allowance, with all arrears thereof, if any, accrued due before the date of such bond; and such bond or obligation shall be prepared and executed at the expense of the borough fund.

All acts of the council to be decided by a majority of councillors present; one third part of the whole num-

LXIX. And be it enacted, that all acts whatsoever authorised or required by virtue of this Act to be done by the council of such borough, and all questions of adjournment (1) or others that may

according to the general acceptation of that term, and has been accustomed for seven years to receive the stipend; and this, although there be an incumbent of the same church, duly appointed under a local Act, which constitutes him, and not the claimant, the minister of the church.

(2) *Semble*, that this section applies only to cases where the allowance or payment has been made by the corporation itself; it does not affect property granted to a corporation, wholly or partially in trust, which comes within s. 71 of this Act. *Rex* v. *Sankey*, 5 A. & E. 423.

(1) To every corporate meeting there belongs an incidental

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ber to be a quorum.

come before such council, may be done and decided by the majority of the members of the council who shall be present at any meeting held in pursuance of this Act, the whole number present at such meeting not being less than one-third part of the number of the whole council; and at all such meetings the mayor, if present, shall preside; and the mayor, or, in the absence of the mayor, such alderman, or in the absence of all the aldermen, such councillor as the members of the council then assembled shall choose to be the chairman of that meeting, shall have a second or casting vote* in all cases of equality of votes; and minutes of the proceedings (2) of all such meetings shall be drawn up and

Who to preside.

Casting vote.

* See s. 25, n. 4.

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power of *adjournment;* such question is to be decided, under this section, by the majority of the members of the council present at any such meeting. No new business (*i. e.* business not mentioned in the notice or summons, and of which business notice was necessary for the original meeting) can be transacted at any *adjourned* meeting. An adjournment must be to some day certain, but notice of it need not be given. It is expressly provided by this section, that no notice of the business to be transacted at any of the four quarterly meetings of the council need be given. See n. (4), p. 131.

(2) These minutes should be entered at the meeting, and signed by the chairman *at that time.* In a case before the Court of Queen's Bench, Mr. Justice *Patteson* observed, "that *perhaps* if the town-clerk had drawn up the minutes, and had them signed after the meeting, we might not say that the thing was incorrect when so done." In the case alluded to, the chairman had taken away the notes or minutes of the business done to his own house, and having revised them, had caused a fair copy to be delivered to the town-clerk on the day after the meeting. *Reg.* v. *Mayor of Evesham,* 8 A. & E. 266; 3 N. & P. 351. See also *Southampton Dock Com-*

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fairly entered into a book to be kept for that purpose, and shall be signed by the mayor, alderman, or councillor presiding at such meeting; and the said minutes shall be open to the inspection (3) of any burgess at all reasonable times, on payment of a fee of one shilling: Provided always, that previous to any meeting of the council held by virtue of this Act, a notice (4) of the time and place of such intended meeting shall be given *three clear days at least* before such meeting, by fixing the said notice on or near the door of the town-hall of the borough; and such notice shall be signed by the mayor, who shall have power to call a meeting of the council as often as he shall think proper; and in case the

Notice of all meetings of the council.

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pany v. *Richards*, 1 Man. & G. 448; *Miles* v. *Bough*, 3 G. & D. 119; 3 Q. B. 845.

(3) By 7 Will. 4 & 1 Vict. c. 78, s. 22, any burgess is to be at liberty to copy or make extracts from these minutes, and from any order of the council for payment of money.

(4) It was held, in *Reg.* v. *Thomas*, 8 A. & E. 183, that the prosecutor of a *quo warranto* information could not allege that notice of the business to be done at a particular meeting had not been given to him or to the councillors, inasmuch as the prosecutor was bound to establish that fact by his affidavits, and had not done so; and per *Coleridge*, J., because, by analogy to the general rule (H. T. 7 & 8 Geo. 4, 6 B. & C. 267), the objection ought not to be allowed on motion, unless specified in the rule *nisi*, which had not been done.

Where the meeting is an *adjourned quarterly* meeting, notice is necessary as to any business which was not actually entered upon at the general quarterly meeting, but not otherwise. *Reg.* v. *Grimshaw*, 10 Q. B. 747. A *coroner*, therefore, cannot be elected at such adjourned quarterly meeting, without notice and summons under this section. *Ib.*

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mayor shall refuse to call any such meeting after a requisition for that purpose, signed by five members of the council at the least, shall have been presented to him, it shall be lawful for the said five members to call a meeting of the council, by giving such notice as is hereinbefore required in that behalf, such notice to be signed by the said members instead of the mayor, and stating therein the business proposed to be transacted at such meeting; and in every case a summons to attend the council, specifying the business proposed to be transacted at such meeting, signed by the town-clerk, shall be left at the usual place of abode of every member of the council, or at the premises in respect of which he is enrolled a burgess, three clear days at least before such meeting; and no business shall be transacted at such meeting other than is specified in the notice (5): Provided always, that there shall be in every borough four quarterly meetings in every year, at which the council shall meet for the transaction of general business, and no notice shall need to be given of the business to be transacted on such quarterly days; and the said quarterly meetings shall be holden at noon on the ninth day of November, or if the ninth day of November shall fall on a Sunday, on the day

Quarterly meetings of council.

(5) It would seem that the word "*notice*" is here used for "summons;" for it will be observed that the "*notice*," when the meeting is called by the mayor, is not required to contain any statement of the business to be transacted; though, in the case of a meeting called by five members of the council, as provided for by this section, the business proposed to be transacted must be specified *both in the notice and in the summons.*

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following, and at such hour on such other three days before the first day of November then next following as the council at the quarterly meeting in November (6) shall decide; and the first business transacted at the quarterly meeting in November shall be the election of mayor. Election of mayor.

LXX. And be it enacted, that it shall be lawful for the council of any borough to appoint out of their own body, from time to time, such and so many committees, either of a general or special nature, and consisting of such number of persons as they may think fit, for any purposes which, in the discretion of such council, would be better regulated and managed by means of such committees: Provided always, that the acts of every such committee shall be submitted to the council for their approval. Council may appoint committees. Proviso.

LXXI. And whereas divers bodies corporate now stand seised or possessed of sundry hereditaments and personal estate, in trust, in whole or in part, Charitable trustees.

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(6) At this meeting, the election of mayor *must precede* that of aldermen. A prior election of aldermen, whether at the quarterly meeting holden at noon, under this section, or at an earlier meeting on the same day, is *void*. *Reg.* v. *M'Gowan*, 11 A. & E. 869; see ante, s. 25, n. (4), p. 46.

By 6 & 7 Will. 4, c. 105, s. 5, immediately after the election of the mayor, the appointment of the sheriff is to be made, who is to hold office until the appointment of his successor. See ante, s. 61, p. 107.

At this meeting, the business of the elections should have precedence of all other matters; and it is not lawful for persons to propose or go into the discussion of other business inconsistent with the elections. *Rex* v. *Parkyns*, 3 B. & Ald. 668.

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for certain charitable trusts (1), and it is expedient that the administration thereof be kept distinct from that of the public stock and borough fund; Be it enacted, that in every borough in which the body corporate, or any one or more of the members of such body corporate, in his or their corporate capacity, now stands or stand solely, or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate, seised or possessed for any estate or interest whatsoever of any hereditaments, or any sums of money, chattels, securities for money, or any other personal estate whatsoever, in whole or in part in trust or for the benefit of any charitable uses or trusts whatsoever, all the estate, right, interest, and title, and all the powers of such body corporate, or of such member or members of such body corporate in

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(1) This section applies to all cases where property has been granted to a corporation, subject to a payment for charitable purposes imposed by the grantor. See *Rex* v. *Sankey*, 5 A. & E. 423; ante, s. 68, p. 129. Property appropriated by a corporation to the maintenance of lecturers to preach before the corporation, is not property held subject to a charitable trust within this section. *In re Oxford Charities*, 3 Myl. & Cr. 239. Tolls granted by charter to a corporation, for the reparation of the walls and bridges within the borough, are gifts for charitable purposes within the stat. of 39 Eliz. c. 5, to be administered in the Court of Chancery. *Attorney-General* v. *Corporation of Shrewsbury*, 6 Beav. 220.

The stat. 39 Eliz. c. 5, enables "all and every person and persons" to found hospitals for the poor, and to incorporate them. A municipal corporation is within the words "every person and persons," and may exercise the power given by that Act. *In re Corporation of Newcastle*, 12 Cl. & F. 402.

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respect of the said uses and trusts, shall continue in the persons who at the time of the passing of this Act are such trustees as aforesaid, notwithstanding that they may have ceased to hold any office by virtue of which before the passing of this Act they were such trustees, until the first day of August, one thousand eight hundred and thirty-six (2), or until Parliament shall otherwise order, and shall immediately thereupon utterly cease and determine: Provided always, that if any vacancy shall be occasioned among the charitable trustees for any borough before the said first day of August, it shall be lawful for the Lord High Chancellor or Lords Commissioners of the Great Seal for the time being, upon petition, in a summary way, to appoint another trustee to supply such vacancy; and every person so appointed a trustee as last aforesaid shall be a trustee until the time at which the person in the room of whom he was chosen would regularly have ceased to be a trustee, and he shall then cease

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(2) Under these words, it has been decided that the *administration* of the charity estates and funds comprised within this section did not continue, after the 1st day of August, 1836, in the persons here described. *Bignold* v. *Springfield*, in the House of Lords, 5 Bing. N. C. 745. But the *legal estate* in lands subject to the charitable trusts continued after that day in the persons in whom it had previously been, notwithstanding this section, and could not be devested out of them by an order subsequently made by the Lord Chancellor for the *administration* of the trust estates, under the last provision in this section. *Doe* d. *Governors of Bristol Hospital* v. *Norton*, 11 M. & W. 913. The Irish Act, 3 & 4 Vict. c. 108, s. 112, expressly vests the legal estate in the new trustees after a certain day.

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to be a trustee: Provided also, that if Parliament shall not otherwise direct, on or before the said first day of August, one thousand eight hundred and thirty-six, the Lord High Chancellor or Lords Commissioners of the Great Seal shall make such orders as he or they shall see fit for the administration, subject to such charitable uses or trusts as aforesaid, of such trust estates (3).

Council to act as trustees where corporators were *ex officio* sole trustees.

LXXII. And be it enacted, that the body corporate named in the said schedules (A.) and (B.) in conjunction with any borough shall be trustees (1) for executing by the council (2) of such borough the

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(3) Persons who are members of the new corporation are not ineligible as trustees, even though the corporation may have formerly set up a claim to the property in opposition to the charity. *Re Ludlow Charities*, 3 Myl. & Cr. 383.

As to the mode of transferring stock, funds, &c., standing in the books of the Bank of England or any other public company, and belonging to the charity trustees of any borough, *solely* upon some charitable trust, see post, ss. 46 and 48 of 7 Will. 4 & 1 Vict. c. 78.

As to payment of the dividends of charitable and corporate property standing in the books of the Bank, &c., see ss. 45, 46, 47, of 7 Will. 4 & 1 Vict. c. 78.

(1) By s. 142 of this Act, this word shall include "trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, by whatever name they are designated."

(2) Under this section, the council are substituted for the mayor, bailiffs, and burgesses, who, under a local Act, had the management of certain quay and harbour dues; they have of course, therefore, the same powers, and no greater, which the mayor, &c. had under the local Act, by the provisions of which they are strictly bound. *Reg.* v. *Corporation of Poole*,

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powers and provisions of all Acts of Parliament made before the passing of this Act (other than Acts made for securing charitable uses and trusts) and of all trusts (other than charitable uses and trusts) of which the said body corporate, or any of the members thereof in their corporate capacity, was or were sole trustees (3) before the time of the first election of councillors in such borough under this Act.

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7 A. & E. 730; 3 N. & P. 730. As to the powers of "the council," see s. 6, ante, p. 11.

(3) The true construction of these words is, that the body corporate should be trustees or commissioners (see interpretation clause, s. 142) for executing, by the town council, the powers and provisions of all Acts of Parliament, under which the old body corporate, or any of the members thereof in their corporate capacity, were *sole trustees*. Therefore, where by a local Act establishing a Court of Requests for the borough of Boston, it was enacted, that the mayor, recorder, deputy recorder, aldermen, and common councilmen for the time being of the borough, the justices of the peace for a certain district, the ministers of certain parishes, together with other persons therein named, should be the commissioners thereof; and that, in case of a vacancy in the office of clerk, the mayor and aldermen of the borough, or the major part of them, should appoint a successor; and that, until such appointment was made, the commissioners might appoint a clerk; and the commissioners were also empowered to remove the clerk for misbehaviour, and, subject to the control of the mayor and aldermen, to appoint a deputy during his removal:—it was held by the Court of Exchequer, that, as the mayor and aldermen were by the local Act *sole trustees* or commissioners for the purpose of appointing the clerk *absolutely*, the town council were the proper persons, and were empowered under this section, to appoint to the office of clerk on a vacancy taking place. *Staniland* v. *Hopkins*, 9 M. & W. 178. See also *Reg.* v. *Hopkins*, 1 Q. B. 161,

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Council to appoint a limited number of councillors to be joint trustees for certain purposes.

LXXIII. And be it enacted, that in every borough in which the body corporate, or a particular or limited number, class, or description of members of the body corporate, or of persons appointed by the body corporate, was or were before the passing of this Act trustees jointly with other trustees (1) for the execution of any Act of Parliament, or of any trust, or in which the body corporate, or any particular or limited number, class, or description of members or nominees of the body corporate, by any statute, charter, bye-law, or custom was or were before the passing of this Act lawfully appointed to or exercised any powers, duties, or functions whatsoever, not otherwise herein provided for, and the continuance of which is not inconsistent with the provisions of this Act, the council of such borough, on the day named in such Act as last aforesaid, or in the deed or will by which such trust is created for a new election, nomination, or appointment of trustees, or on which such new election, nomination, or appointment has usually been made, (and if there shall be no such day named or usually observed, then on the first day of January in every year,) shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there were theretofore members or nominees of such corporate body, who in right of their office were such trustees, or

(1) This section, it seems, does not apply to any case provided for by section 72, or by any previous section of the Act. See *Staniland* v. *Hopkins*, 9 M. & W. 178, supra.

See also s. 8 of 6 & 7 Will. 4, c. 105, post, and the case of *Palmer* v. *Powell*, 6 M. & W. 627, there cited.

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charged with the execution of such powers, duties, and functions, in room of the members or nominees of such corporate body ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of this Act, and in every case of extraordinary vacancy among the trustees or persons so appointed by the council shall forthwith appoint one other member of the council in the room of the person by whom such vacancy has been made, and to hold his trust or office for such time as the person by whom such vacancy has been made would regularly have held it.

Present trustees of certain acts continued for a definite time.

LXXIV. And be it enacted, that notwithstanding anything in this Act contained, every member of any body corporate who in his corporate capacity, and every nominee of any body corporate, or any particular number, class, or description of members of such body corporate, who at the time of the passing of this Act shall be for a definite number of years or other shorter time a trustee of such Acts or trusts as last aforesaid, shall continue to be such trustee, until the time when he would have ceased to be such trustee if this Act had not passed; and if a trustee for an indefinite time, or for life, or for so long as he shall be a member, or of a particular class or description of such body corporate, then until the first day of January in the year one thousand eight hundred and thirty-six, and no longer; and every member of the council appointed under the provisions of this Act to be a trustee of such Acts or trusts as last aforesaid shall continue to be such trustee until the time herein provided for the new appointment of a member of the council to be

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trustee in his room, notwithstanding that he may have ceased to be a member of the council; and in case any particular member or officer of any of the said bodies corporate shall have been appointed by any such Act, or by any such trust deed or will as last aforesaid, to perform during a definite number of years or other shorter time any specific powers, duties, or functions whatsoever, the person who at the time of the passing of this Act shall be the person designated and qualified to perform the same shall continue to perform the same until the time when he would have ceased to perform the same if this Act had not passed; and if appointed for an indefinite time, or for life, or for so long as he shall be a member, or of a particular class or description of such body corporate, then until the first day of January in the year one thousand eight hundred and thirty-six and no longer: Provided nevertheless, that nothing in this Act shall be construed to extend to the body corporate of the trustees of the Liverpool Docks, but that every person who at the time of the passing of this Act, shall be a trustee of the Liverpool Docks, and none other, shall be continued to be such trustee until the first day of November in the year one thousand eight hundred and thirty-six and no longer; and every such trustee who is appointed to discharge, or in his corporate capacity discharges, any powers, duties, or functions whatsoever in respect of the said last-mentioned trust estate, and none other, shall continue to discharge the same, as if this Act had not passed, until the first day of November in the year one thousand eight hundred and thirty-six, and no longer.

Trustees not to go out of office by reason of ceasing to be of the council, until the time prescribed by the terms of the trust.

The Act not to extend to the trustees of the Liverpool Docks.

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Powers vested in trustees may be transferred to councillors.

LXXV. And whereas it may be expedient that the powers now vested in the trustees appointed under sundry Acts of Parliament for paving, lighting, cleansing, watching, regulating, supplying with water, and improving certain boroughs, or certain parts thereof, should be transferred to and vested in the councils of such boroughs respectively; Be it enacted, that the trustees appointed by virtue of any such Act of Parliament as last aforesaid, wherein the trustees, or the persons whose trustees they may be, are not beneficially interested, may, if it shall seem to them expedient, at a meeting to be called for that purpose, transfer in writing under their hands and seals all the powers vested in them as such trustees by any such Act or Acts of Parliament as aforesaid to the said body corporate of such borough, and the said body corporate of such borough shall thenceforth be trustee for executing by the council of such borough the several powers and provisions of any such Act or Acts of Parliament, and the members of the council shall have the same powers and be subject to the same duties as if their names had been originally inserted in such Act or Acts, or as if they had been elected under the provisions of any such Act or Acts as such trustees respectively: Provided always, that no such transfer as aforesaid shall be made of the powers vested by virtue of the Acts mentioned in schedule (E.), which relate to the town of Cambridge, without the consent of the chancellor, masters, and scholars of the University of Cambridge.

Reserving rights of University of Cambridge.

A watch committee to be appoint-

LXXVI. And be it enacted, that the council to be elected for any borough shall, immediately after

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e', to consist of the mayor and councillors; such committee to appoint constables for the borough.

their first election, and so from time to time thereafter as they shall deem expedient, appoint, for such time as they may think proper, a sufficient number of their own body, who, together with the mayor of the borough for the time being, shall be and be called "the watch committee" for such borough; and all the powers hereinafter given to such committee may be executed by the majority of those who shall be present at any meeting of such committee, the whole number present at such meeting being not less than three; and such watch committee shall, within three weeks after their first formation, and so from time to time thereafter as occasion shall require, appoint a sufficient number of fit men who shall be sworn in before some justice of the peace having jurisdiction within the borough, to act as constables for preserving the peace by day and by night, and preventing robberies and other felonies, and apprehending offenders against the peace; and the men so sworn shall not only within such borough, but also within the county in which such borough or part thereof shall be situated, and also within every county being within seven miles of any part of such borough, and also within all liberties in any such county (1), have all such powers and privileges (2), and be liable to

See s. 84.

Constables to be for the county, &c. as well as borough.

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(1) See *Mellor* v. *Leather*, 1 E. & B. 619, in note to s. 133, post.

(2) Where a constable appointed under this section was sued for an act done in the exercise of his *general* duty as a constable, and the plaintiff discontinued, such constable was held entitled (before 5 & 6 Vict. c. 97) to double costs under the 21 Jac. 1, c. 12, s. 5, and not merely to costs as between attorney and client under the 133rd section of this Act.

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all such duties and responsibilities, as any constable duly appointed now has or hereafter may have within his constablewick by virtue of the common law of this realm, or of any statutes made or to be made, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within such borough, or within any county in which they shall be called on to act as constables, for conducting themselves in the execution of their office.

Watch committee to make regulations for the management of the constables.

LXXVII. And be it enacted, that the watch committee for any such borough as aforesaid may from time to time frame such regulations as they shall deem expedient for preventing neglect or abuse, and for rendering such constables efficient in the discharge of their duties; and the said committee, or any two justices of the peace having jurisdiction within the borough, may at any time suspend or dismiss any constable whom they shall think negligent in the discharge of his duty, or otherwise unfit for the same; and when any man shall be so dismissed, or cease to belong to the said constabulary force, all powers vested in him as a constable by virtue of this Act shall immediately cease; and no man so dismissed as aforesaid shall be re-appointed without the consent of two of the justices of the peace having jurisdiction within the borough.

Power to constables to

LXXVIII. And be it enacted, that it shall be

Maberly v. *Titterton*, 7 M. & W. 540. (See *Rix* v. *Borton*, 4 P. & D. 182, 12 A. & E. 468, under the Highway Act). See post, s. 133, n.; also *Penney* v. *Slade*, 5 Bing. N. C. 469.

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apprehend disorderly persons, &c.

lawful for any constable during the time of his being on duty to apprehend all idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of intention to commit a felony, and to deliver any person so apprehended into the custody of the constable appointed under this Act, who shall be in attendance at the nearest watch-house, in order that such person may be secured until he can be brought before a justice of the peace to be dealt with according to law, or may give bail for his appearance before a justice of the peace, if the constable shall think fit to take bail in the manner hereinafter mentioned.

Constables attending at the watch-houses in the night may take bail by recognisance from persons brought before them for petty misdemeanors: such recognisance to be conditioned for the appearance of the parties before a magistrate.

LXXIX. And be it enacted, that where any person charged with any petty misdemeanor shall be brought without the warrant of a justice of the peace into the custody of any constable appointed under this Act, during his attendance in the night-time at any watch-house within any such borough as aforesaid, it shall be lawful for such constable, if he shall think fit, to take bail by recognisance, without any fee or reward, from such person, conditioned that such person shall appear for examination within two days before a justice of the peace within the borough, at some time and place to be specified in the recognisance; and every recognisance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if the same had been taken before a justice of the peace; and the constable shall enter in a book, to be kept for that purpose in every watch-house, the names, residence, and occupation of the party, and his surety or sureties, if any, enter-

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ing into such recognisance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place when and where the party is required to appear; and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up, to be signed by the constable, and shall return the same to the next general or quarter sessions of the peace for the borough, or for the county in which such borough is situate, in those boroughs for which there shall be no separate general or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice, that the party has not complied with the obligation therein contained; and the clerk of the peace shall make the like estreats and schedules of every such recognisance as of recognisances forfeited in the sessions of the peace; and if the party not appearing shall apply by any person on his behalf to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognisance to such further time as he shall appoint; and when the matter shall be heard and determined, either by the dismissal of the complaint or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognisance for the appearance of the party before a justice shall be discharged without fee or reward.

In default of appearance, recognisance to be forfeited.

Time of hearing may be postponed.

LXXX. And be it enacted, that if any constable of any borough shall be guilty of any neglect of duty, or of any disobedience of any lawful order, every

Penalties on constables for neglect of duty.

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such offender, being convicted thereof before any two justices of the peace, shall, for every such offence, be liable to be imprisoned for any time not exceeding ten days, or to be fined in any sum not exceeding forty shillings, or to be dismissed from his office, as such justices shall in their discretion think meet.

Penalty for assaults on constables.

LXXXI. And be it enacted, that if any person shall assault or resist any constable of any borough appointed under this Act in the execution of his duty, or shall aid or incite any person so to assault or resist, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum, not exceeding five pounds, as the said justices shall think meet: Provided always, that nothing herein contained shall prevent any prosecution by way of indictment against any person so offending, but so as that such person shall not be prosecuted by indictment and also proceeded against under this Act for the same offence.

Proviso.

Regulation and payment of expenses.

LXXXII. And be it enacted, that the treasurer of every borough appointed under this Act shall pay to the constables of such borough appointed under this Act, such salaries, wages, and allowances, and at such periods, as the watch committee for such borough shall, subject to the approbation of the council, direct, and the council shall order to be paid also, any extraordinary expenses which such persons shall appear to have necessarily incurred in apprehending offenders, and executing the orders of any justice of the peace having jurisdiction within such borough, such expenses having been first ex-

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amined and approved by such justice (1); and the said treasurer shall also pay such further sums as the watch committee shall, subject to the approbation of the council, award to any of the persons belonging to the said constabulary force, as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service, and all other charges and expenses which the watch committee shall, subject to the approbation of the council, direct to be paid for the purposes of the constabulary force under this Act (2). Rewards for activity, &c.

LXXXIII. And be it enacted, that any two or more of the justices of the peace having jurisdiction within any borough, are hereby authorised and required, in the month of October in every, year to nominate and appoint by precept in writing, under their hands, so many as they shall think fit of the inhabitants of such borough (not legally exempt from serving the office of constable), to act as special constables within such borough, whensoever they shall be required by the warrant of any of the justices of the peace having jurisdiction within such borough so to act, and not otherwise; and every such warrant shall recite, that, in the opinion of the justice granting the same, the ordinary police force Magistrates to appoint annually a certain number of persons to act as special constables.

(1) See *Reg.* v. *Thompson*, 5 Q. B. 477; Dav. & M. 497, in note (8) to s. 92, post, p. 164.

(2) See 11 & 12 Vict. c. 14, authorising the establishment of a borough police *superannuation fund*, post.

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of the borough is insufficient at that time to maintain the peace of the borough; and every person so appointed a special constable shall take the oath set forth in the Act passed in the session of Parliament holden in the first and second years of the reign of his present Majesty, intituled *An Act for amending the Laws relative to the Appointment of Special Constables, and for the better Preservation of the Peace*, and shall have the powers and immunities, and be liable to the duties and penalties enacted by the said last-mentioned Act; and every person so appointed a special constable shall receive, out of the borough fund, for every day during which he shall be called out to act as such, the sum of three shillings and sixpence, and no more (1).

1 & 2 Will. 4, c. 41.

Payment of special constables.

On notice of appointment of constables, the present provisions in local Acts as to watching, &c. to cease.

LXXXIV. And be it enacted, that, as soon as constables shall have been appointed by the watch committee for any borough, a notice signed by the mayor of such borough, specifying the day on which such constables shall begin to act, shall be fixed on the door of the town-hall and every church within such borough; and on the day so specified in such notice, so much of all Acts named in conjunction with such borough in the schedule (E.) to this Act annexed, and of all Acts made before the passing of this Act, as relates to the appointment, regulation, powers, and duties, or to the assessment or col-

(1) This section does not supersede the general authority given to justices of any town, &c., by stat. 1 & 2 W. 4, c. 41, s. 1, to appoint *special constables* on information that a riot may be apprehended. *Reg.* v. *Hulton*, 13 Q. B. 592.

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lection of any rate to provide for the expenses of any watchmen, constables, patrol, or police for any place situated within such borough, shall cease and determine; and all watch-houses and watch-boxes in any such place, and all arms, accoutrements, and other necessaries provided at the public expense for any watchmen, constables, patrol, or police therein, shall be given up to such persons as shall be named by the said mayor in such notice, for the use and accommodation of the constables to be appointed under this Act, and all the property so to be given up shall be deemed to belong to the body corporate of such borough; and in case any person having the charge, control, or possession of any watch-house, watch-box, arms, accoutrements, or necessaries as aforesaid, shall neglect or refuse to give up the same, as hereinbefore required, every such offender, being convicted thereof (1) before any two justices of the peace, shall for every such offence forfeit and pay, over and above the value of the property not given up, such sum not exceeding five pounds, as the said justices shall think meet; and where there shall be any building in any such place as aforesaid, a part only of which building shall have been heretofore used as a watch-house, such part shall be given up every day, from the hour of four in the afternoon until the hour of nine in the forenoon, for the use and accommodation of the constables to be appointed under this Act; and if any person having the charge, control, or possession of any such building shall neglect or refuse to give up such part

Watchboxes, arms, &c. to be given up for the use of the constables appointed under this Act.

Penalty for not giving them up.

Building used as watchhouse to be given up.

(1) See the form of conviction, post, s. 130.

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thereof for the purposes aforesaid, or to permit free access thereto or egress therefrom during any portion of the time above prescribed, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum, not exceeding five pounds, as the said justices shall think meet: Provided, nevertheless, that in every case in which before the passing of this Act a rate might be levied in any borough for the purpose of watching (2), conjointly with any other purpose, nothing in this Act contained shall be construed to prevent the levying and collecting of such rate for such other purpose solely, or to repeal the powers given in any Act, so far as the same relate to such other purpose: Provided always, that where the amount of such rate before the passing of this Act might not exceed a given rate in the pound on the value of property rateable thereunto, the rate so to be levied for such other purpose solely shall not exceed such proportion of the said given rate in the pound as shall appear to have been expended for such purpose other than watching, by an account of the average yearly expenditure during the last seven years, or where such rate shall not have been levied during seven years, then during such less number of years as such rate shall have been levied.

Proviso.

Proviso as to rates in arrear, and as to debts.

LXXXV. Provided always, and be it enacted, that any rate for defraying the expenses of any

(2) See post, as to the watch-rate, s. 92, p. 173; and 2 & 3 Vict. c. 28.

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watchmen, constables, patrol, or police in any such place as aforesaid, made previously to the day specified in such notice as aforesaid, shall be levied and collected in the same manner as if this Act had not been passed: Provided also, that nothing herein contained shall prevent the levying and collecting of any rate in any such place as aforesaid, for the purpose of paying any debt contracted before the passing of this Act, or the interest of any such debt, but that such rate shall and may be levied and collected in the same manner as if this Act had not been passed.

Watch committee to transmit a report quarterly to the Secretary of State, and also a copy of their rules, &c.

LXXXVI. And be it enacted, that the watch committee of every such borough shall, on the first day of January, the first day of April, the first day of July, and the first day of October in every year, transmit to one of his Majesty's principal Secretaries of State a report of the number of men appointed to act as constables or policemen in such borough, and of the description of arms, accoutrements, and clothing, and other necessaries furnished to each man, and of the salaries, wages, and allowances payable to such constables or policemen, and of the number and situation of all station-houses in such borough; and also a copy of all rules, orders, and regulations, which shall from time to time be made by such watch committee, or by the council of such borough, for the regulation and guidance of such constables or policemen.

Power for council to order parts of a borough, not within a

LXXXVII. And whereas parts of certain boroughs are within the provisions of one or more local Act or Acts for regulating the lighting thereof,

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local Act as to lighting, to be included in such Act.

and certain other parts of the same boroughs are not within the provisions of any local Act for regulating the lighting thereof, and for want of such lighting the efficiency of the constables may be much diminished, and great facilities afforded for the commission of crimes and for the escape of offenders; for remedy thereof be it enacted, that it shall be lawful for the council of any borough, in any part of which there is a local Act for the lighting thereof, to make an order that any part of such borough not being within the provisions of any local Act for the lighting thereof, shall, from and after a certain day to be named in such order, be taken to be within the provisions of such local Act or Acts for lighting any part of such borough as the common council (1) shall specify in such order; and after such day the part named in such order shall be within the provisions of the Act or Acts so specified, so far as relates to lighting, or to any rates authorised to be levied for the purpose of lighting, as fully as if such part had been originally named in such Act or Acts, anything in such Act or Acts to the contrary notwithstanding: Provided always, that every part named in such order shall be lighted in the like manner as those parts which before the making of such order were within the provisions of such local Act, and that the rate to be raised for the purpose of defraying the expenses of lighting any part so named in such order, shall not exceed

Proviso as to amount of rate for lighting.

(1) This expression appears to have been inadvertently used here. "The Council" is the term used throughout the Act, according to the provision in s. 25.

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the average expense in the pound of the lighting of the other parts of such borough.

Council may assume the powers of inspectors under 3 & 4 Will. 4, c. 90, for lighting any part of the borough not within a local Act for lighting the same.

LXXXVIII. And be it enacted, that, if the council of any borough chosen under this Act shall, by public notice to be affixed on the outer door of the town-hall or in some public place within the borough, declare that on a certain day, to be named in such notice, not less than twenty-one days after the day on which such public notice shall have been given, they will take upon themselves the powers given to the inspectors named in a certain Act, made in the third and fourth year of his present Majesty (1), intituled *An Act to repeal an Act of his late Majesty King George the Fourth, for the Lighting and Watching of Parishes in England and Wales, and to make other Provisions in lieu thereof*, so far as the same relates to the lighting the whole or any part of any borough, which is not within the provisions of any local Act, or in which there is no power of levying rates for lighting the same, the council of such borough shall, after the day named in such notice, have the same powers and duties as belong to inspectors under the said last-recited Act in regard to lighting, and to levying rates for the purpose of lighting such part of the borough, except so far as the same are contrary to or inconsistent with the provisions of this Act; and in such case the council shall have the sole power to fix and determine the amount of money which

3 & 4 Will. 4, c. 90.

Council to fix the amount.

(1) See the chief sections of this statute in the Appendix. As to publication of the rates, see *Reg.* v. *Whipp*, 4 Q. B. 141.

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they will call for in any one year for the purpose of lighting such part of the borough, so that such sum shall not exceed the rate of sixpence in the pound on the full and fair annual value of all property rateable to the relief of the poor within such part of the borough: Provided also, that it shall not be lawful in such case for the inhabitants of such part of the borough at any time to determine that the provisions of the said recited Act shall cease to be acted upon.

Act not to interfere with the regulations for the government, &c. of dockyards, arsenals, &c.

LXXXIX. Provided always, and be it enacted, that nothing herein contained shall be construed to interfere with the watching, paving, or lighting, and internal regulations established for the government and security of any of his Majesty's dockyards, victualling establishments, arsenals, and barracks respectively; nor shall any of the tenements within the said dockyards, victualling establishments, arsenals, or barracks, or the inhabitants of the same, be liable to be assessed to the rates for watching, paving, or lighting the other parts of the city, borough, or parish within which the same may be respectively situated, unless such tenements or the inhabitants thereof are now or may hereafter become liable to be assessed to any such rates made under or by virtue of any law or statute now in force; nor shall anything herein contained extend to defeat or affect the authority of justices of the peace which by an Act passed in the second year of his present Majesty's reign, intituled *An Act to amend the Laws relating to the Business of the Civil Departments of the Navy, and to make other Regulations for more effectually carrying on the Duties of the said Depart-*

2 & 3 Will. 4, c. 40.

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ments, is vested in the Commissioners for executing the office of Lord High Admiral of the United Kingdom, and in the superintendents of the several dockyards and other naval and victualling establishments, in all places and in all matters relating to his Majesty's naval service, and to the stores, provisions, ammunition, and accounts thereof.

Council to have power to make bye-laws.

XC. And be it enacted, that it shall be lawful for the council of any borough to make such bye-laws (1) as to them shall seem meet for the good

(1) Every bye-law must be reasonable, and not inconsistent with any statute, or with the general principles of the law of the land, or contrary to the provisions of the particular charter under which the persons making it act.

A bye-law may *regulate* or modify the constitution of a corporation, but cannot *alter* it; so also, a bye-law can be made for the *regulation* of any trade carried on within the borough, but it must not be in *restraint* of it; and this power of regulation still remains, notwithstanding s. 14 of this Act, abolishing all exclusive rights of trading. See Cowp. 269, and *Shaw* v. *Pope*, 2 B. & Ad. 465: see also 1 Lev. 229; *Trinity House* v. *Crisp*, 2 Shower, 95; *Woolley* v. *Idle*, 4 Burr. 1951.

In *Elwood* v. *Bullock*, 6 Q. B. 383, a bye-law, that no person should erect any booth or place any caravan for the purpose of a show or public entertainment within the borough, without the licence of the mayor, and that any such licence, given at any other than fair time, should be revoked by the mayor, if the inhabitant householders, residing within 100 yards of the place for which it was granted, should memorialise the mayor to grant it, was held to be unreasonable and void.

In *Hopkins* v. *Mayor of Swansea*, 4 M. & W. 640, Lord *Abinger* observed—"The bye-law has the same force within its limits, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large."

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rule and government of the borough, and for prevention and suppression of all such nuisances as are

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A bye-law, without express power being given for the purpose by Act of Parliament, can only be enforced by a pecuniary penalty, which must be *certain*. See *Bosworth* v. *Burgen*, 7 Mod. 459; Lutw. 1324.

The validity of a bye-law may be tested and tried in an action brought to recover the penalty; or, if the mode of enforcing the penalty be by distress, by an action of trespass. *Moir* v. *Munday*. Sayer, 181, 185.

See the next section (91), as to breaches of bye-laws made under this Act.

The power to make bye-laws is legally incident to every corporation, and that power is *primâ facie* to be exercised by the body *at large*. *Sutton's Hospital case*, 10 Rep. 31 b; *Corporation of Feltmakers* v. *Davis*, 1 Bos. & P. 100; see also the *Case of Corporations*, 4 Rep. 77 b. And by the same power by which bye-laws are made, they may also be repealed. *Rex* v. *Head*, 4 Burr. 2515; *Rex* v. *Ashwell*, 12 East, 29: and see 1 Lord Raymond, 498; *Rex* v. *Bird*, 13 East, 367; *Rex* v. *Westwood*, 4 B. & C. 806.

By the 1st section of this Act, all laws, usages, &c., inconsistent with the provisions of this Act, are repealed. But all other bye-laws, &c., are still in force. By the present section special powers are given to the council, who are empowered, provided that at least *two-thirds of the whole number of the council be present**, to make bye-laws for the good rule and government of the borough, and for the prevention of nuisances, &c., and to appoint the fines for the suppression of "such offences." This provision would have been much clearer, had the power to affix fines been for the breach of any bye-law so made by the council.

Quære also, whether the council, who have a limited power under this section to make bye-laws, can repeal a bye-law pre-

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* See ante, s. 69, p. 129, as to the majority of those *thus present* being competent to make the bye-laws; and note (2) to s. 31, p. 58.

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not already punishable in a summary manner by virtue of any Act in force throughout such borough (2), and to appoint by such bye-laws such

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viously existing, and not in any way relating to the matters in regard to which they are empowered to make bye-laws?

A general power to make bye-laws being incident to the *whole* body of the corporation, it has been held, where by a charter a select body in a corporation had power to make bye-laws for the good rule and government of the borough, letting of its lands, and *other matters and causes whatsoever concerning the borough*, and by the charter it was also directed, that the mayor, bailiffs, and burgesses should from time to time elect other burgesses—that the general body of mayor, bailiffs, and burgesses might make a bye-law that the burgesses should be elected by the select body. *Rex* v. *Westwood* (*in error*), before the House of Lords, 7 Bing. 1; *S. C.*, 2 Dow & Clark, 21; 4 B. & C. 781. See *Player* v. *Vere*, Sir T. Raym. 288, 324.

By s. 51, the council are to make bye-laws affixing the amount of the fine to be paid by persons on non-acceptance of office; such bye-laws are to be made, according to the words of that section, "*as hereinafter provided*;" but no reference is made in this section to that particular description of bye-law. It is presumed, therefore, that such bye-law must be made in the same manner, and subject to the same regulations, as the bye-laws "for the good rule and government of the borough." Looking to the wording of the proviso, that no fine is to exceed 5*l*., it might fairly be questioned whether the words in the latter part of it—"*such bye-law*"—do not relate only to bye-laws for the suppression of nuisances, though doubtless intended to refer to all bye-laws which the council are empowered to make.

(2) A question has been raised, whether the council have the power to make a bye-law for the suppression of a nuisance, which is punishable by a local Act relating only to a single parish, or to a part only of the borough. It has been considered that the word "*throughout*" must be construed

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fines (3) as they shall deem necessary for the prevention and suppression of such offences: Provided that no fine so to be appointed shall exceed the sum of five pounds, and that no such bye-law shall be made, unless at least two-thirds of the whole number of the council shall be present; Provided that no such bye-law shall be of any force, until the expiration of forty days after the same or a copy thereof shall have been sent, sealed with the seal of the said borough, to one of his Majesty's principal Secretaries of State, and shall have been affixed on the outer door of the town-hall or in some other public place within such borough; and if at any time within the said period of forty days his Majesty, with the advice of his Privy Council, shall disallow the same bye-law or any part thereof, such bye-law or the part thereof disallowed shall not come into operation: Provided also, that it shall be lawful for his Majesty, if he shall think fit, at any time within

Proviso: no fine to exceed 5*l.*

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strictly, and that the council have the power in such case to make a general bye-law, which shall be applicable to all parts of the borough.

(3) *Quære*, whether it is not necessary that the *exact amount* of each fine should be mentioned in the bye-law. The limit, viz. 5*l.*, is fixed by this section. It is contended by some persons that the amount may be left open, and that a bye-law, enacting that the offence should be punishable by a fine, not less than 10*s.* and not exceeding 5*l.*, would be valid. This doubtless would be convenient; but would such a bye-law be *certain?*—could the corporation enforce it by the usual common-law remedy, viz. by an action of debt or assumpsit? It is believed that bye-laws have invariably fixed the *exact sum.*—See the note to the next section. See also *Piper* v. *Chappell*, 14 M. & W. 624; *Wood* v. *Searl*, Bridgman, 139.

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the said period of forty days, to enlarge the time within which such bye-law, if disallowed, shall not come into force; and no such bye-law shall in that case come into force until after the expiration of such enlarged time.

As to breaches of bye-laws.

XCI. And be it enacted, that all the provisions hereinafter contained (9) relative to offences against this Act punishable upon summary conviction shall be taken to apply to all offences committed in breach of any bye-law or regulation made by virtue of this Act.

All corporate property and all fines received to be carried to the

XCII. And be it enacted, that, after the election of the treasurer in any borough, the rents and profits of all hereditaments (1), and the interest, divi-

(9) By this section, all the provisions contained in sections 127 to 133 inclusive, relative to offences punishable on summary conviction under this statute, are to apply to breaches of any bye-law *made by virtue of this Act.* The borough justices, it would seem, therefore, have no jurisdiction over an offence against a bye-law made previously to the present Act coming into operation. Every prosecution for a breach of a bye-law made under this Act must be commenced within three months after the commission of the offence. See s. 127.

But *semble*, that the remedies given by this section are *cumulative*, and will not debar the corporation from availing themselves of the usual common-law mode of enforcing a bye-law by action of debt or assumpsit. *Adley* v. *Reeves*, 2 M. & Sel. 61; *Bodwic* v. *Fennell*, 1 Wils. 233. The mode of enforcing the payment of the fine for not accepting an office, is prescribed by s. 51, ante, p. 84.

(1) Under this section, all the corporate funds, after payment of debts, &c., as specified, are appropriated to *public*

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account of the borough fund.

dends (2), and annual proceeds of all monies, dues, chattels, and valuable securities belonging or pay-

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purposes, to be expended under the direction of the council for the general benefit of the inhabitants and the improvement of the borough.

After the passing of this Act, it was held by the Court of Queen's Bench, that the corporation of Liverpool were no longer rateable to the relief of the poor in respect of certain town and anchorage dues, no part of such receipts being any longer applicable *to private purposes*. *Reg.* v. *Mayor &c. of Liverpool*, 9 A. & E. 435; 1 P. & D. 334.

It was further held, that a corporation was not rateable to the relief of the poor in respect of its lands or other property, of which the whole profits under this section are payable to the "borough fund," although the land was situate in a parish without the limits of the borough. *Reg.* v. *Inhabitants of Exminster*, 12 A. & E. 2; 4 P. & D. 69.

In consequence of the above decisions, the statute 4 & 5 Vict. c. 48 (post), was passed, enacting that the municipal corporations mentioned in schedules (A) and (B) of this Act shall be rateable to the relief of the poor, as the beneficial occupiers, in respect of corporate property which they may be in occupation of; with a proviso for the exemption of such property from rateability where it lies in any parish situate *wholly within any borough, and* in which borough the poor are relieved *by one entire rate*, or in which the poor within the boundaries or limits thereof, as existing for mnnicipal purposes at the time of the passing of the Municipal Act, were then relieved by one entire poor rate.

Under this section, a creditor of a corporation cannot have execution, in respect of a debt which accrued before the passing of this Act, against property acquired by the corporation *since* the passing of the Act. *Arnold* v. *Ridge*, 13 C. B. 745.

(2) Under these words, the council are restricted from expending *the principal* of any monies belonging to the borough. Accordingly, where corporation lands had been sold to Government under the Fortification Acts (43 Geo. 3, c. 55, and

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able to any body corporate named in conjunction with the said borough in the said schedules (A.) and (B.), or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this Act (the application of which has not been already provided for), shall be paid to the treasurer of such borough (3); and all the monies which he shall so receive shall be carried by him to the account of a fund to be called "*The Borough Fund*;" and such fund, subject to the payment of any lawful debt due from such body corporate to any person, which shall have been contracted before the passing of this Act (4), and un-

Payment of debts, &c., salaries of recorder, town-clerk, treasurer, and other officers, and election expenses to be paid out of such fund.

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44 Geo. 3, c. 95), and the money had been paid into Court under the last-mentioned Act:—it was held that such money could not, by an order of the Court, be applied in discharge of corporation debts incurred since the passing of this Act; for that, under this (the 92nd) section, *the dividends only* could be applied to such purpose. *Ex parte The Corporation of Hythe*, 4 Y. & Coll. 55.

It was held, also, in the same case, that the trusts of the Municipal Corporations Act are applicable to personal as well as to real estate. See also *The Attorney-General* v. *The Corporation of Liverpool*, 1 Myl. & Cr. 199.

(3) The Court will not, on the application of an individual freeman (though he may be ultimately entitled to part of the money), grant a *mandamus* to the mayor or other party to pay over money arising from the rents of corporate property to the treasurer of the borough, unless such application be made either by the treasurer, or after he has been required to demand such money from the mayor or other party. *Reg.* v. *Frost*, 8 A. & E. 822; see also *Reg.* v. *Pepper*, 7 A. & E. 747.

(4) This section, as well as ss. 94 and 97, shew that the

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redeemed, or of so much thereof as the council of such borough from time to time shall be required

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intention of the legislature was to leave undisturbed all *bonâ fide* debts or contracts relating to the corporate property. Where a bond was given in 1833 by a corporation to one of its aldermen to reimburse him the costs which he had without the authority of the then corporation incurred, in defending, though unsuccessfully, several *quo warranto* informations, which had been filed against him and several other members:—*Held*, in the absence of all fraud, that the old corporation before the present Act, and the new corporation since, were liable on such a bond, and that such liability was "*a lawful debt*" within this section. *Holdsworth* v. *Mayor &c. of Dartmouth*, 11 A. & E. 490, 3 P. & D. 308.

A bond given after this Act, and before the 6 & 7 W. 4, c. 104, post, for money borrowed by the corporation, was held to be valid in law, and the corporation suable upon it, although under this section it might not be enforceable against the borough fund. *Pallister* v. *Mayor &c. of Gravesend*, 19 L. T., C. P., 358.

As to the power of corporations to grant their property, see *Smith* v. *Barrett*, 1 Sid. 161; *Rex* v. *Watson*, 2 T. R. 199; and *Mayor &c. of Colchester* v. *Louton*, 1 Ves. & B. 226.

See 6 & 7 Will. 4, c. 104, s. 1, which, after reciting—"Whereas certain difficulties have occurred in putting the said Act (5 & 6 Will. 4, c. 76) into execution, and certain penalties have been imposed which ought not to be imposed, for the benefit of the said borough fund," enacts that, from and after the passing of that Act, it shall be lawful for the council of any borough to execute *new securities* for the repayment, &c. of any debts and obligations contracted by or on behalf of the corporation *before the passing of the 5 & 6 W. 4, c. 76*. See *Attorney-General* v. *Corporation of Lichfield*, 13 Sim. 847, and *Reg.* v. *Town Council of Lichfield*, 4 Q. B. 893; Dav. & M. 491. This is further amended by 7 Will. 4 & 1 Vict. c. 78, s. 28, which provides that any *money borrowed*, and applied to discharge any *pre-existing* debt, shall be deemed to be (within the meaning of s. 1 of 6

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or shall deem it expedient to redeem, and to the payment from time to time of the interest of so much thereof as shall remain unredeemed, and saving all rights, interests, claims, or demands of all persons or bodies corporate in or upon the real or personal estate of any body corporate by virtue of any proceedings either at law or in equity which have been already instituted or which may be hereafter instituted, or by virtue of any mortgage or otherwise, shall be applied towards the payment of the salary of the mayor, and of the recorder, and of the police magistrate hereinafter mentioned*, when there is a recorder or police magistrate, and of the respective salaries of the town-clerk and treasurer, and of every other officer whom the council shall appoint (5), and also toward the payment of the expenses (6) incurred from time to time in preparing and printing burgess lists, ward lists, and notices, and in other matters attending such elections (7) as are

* § 99 & 103.

& 7 Will. 4, c. 104) a debt contracted before the passing of the Municipal Corporation Act.

(5) A salaried officer of the corporation cannot, therefore, *maintain an action* against the corporation for arrears of his salary. *Addison* v. *Mayor &c. of Preston*, 12 C. B. 108.

(6) Under this word, the town-clerk of a borough can only claim payment for actual *disbursements*. He is not entitled to be paid for loss of time, &c., or generally for the discharge of the duties cast upon him by this Act. *Jones* v. *Mayor &c. of Carmarthen*, 8 M. & W. 605.

(7) Where a writ of mandamus issued to a corporation, on the application of A., directing them to proceed to the election of an alderman in lieu of D., against whom judgment of ouster had been given in a *quo warranto* in which A. was re-

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herein mentioned, and in boroughs which shall have a separate Court of sessions of the peace, as is hereinafter provided, towards the expenses of the prosecution, maintenance, and punishment of offenders, and towards such other sum to be paid by such borough to the treasurer of such county as is hereinafter provided*, and towards the expense of maintaining the borough gaol, house of correction, and corporate buildings, and towards the payment of the constables, and of all other expenses not herein otherwise provided for (8), which shall be necessarily incurred in carrying into effect the provisions of this Act; and in case the borough fund shall be more than sufficient for the purposes aforesaid, the surplus thereof (9) shall be applied, under the di-

* § 114.

Application of surplus.

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lator, the Court expressed their opinion that the costs incurred by A. incident to the mandamus were "expenses attending an election" within this section, and payable by the corporation: but they refused to direct that they should be paid out of the borough fund. *Reg.* v. *Mayor &c. of Cambridge*, 4 Q. B. 801.

(8) Under these words, fees payable to the clerk to the justices, when no other mode of payment is provided, and where there are no means of obtaining payment from the parties in the first instance liable to pay them, are expenses chargeable on the borough fund, and a mandamus will lie to enforce payment of them. *Reg.* v. *Mayor &c. of Gloucester*, 5 Q. B. 862; Dav. & M. 677. Repairs of a pew in the parish church, which the corporation have occupied as such, may lawfully be charged upon the borough fund. *Reg.* v. *Mayor &c. of Warwick*, 8 Q. B. 926.

(9) A question has been frequently raised, whether the council can expend any of the surplus in defending their corporate rights. In the case of *Attorney-General* v. *Mayor*

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rection of the council, for the public benefit of the

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of Norwich, 2 Myl. & Cr. 425, affirming the judgment in 1 Keen, 700, the Lord Chancellor observed:—"This clause, after providing that the council shall be at liberty to pay all other expenses not otherwise provided for, which shall be necessarily incurred in carrying into effect the provisions of this Act—(which cannot merely mean expenses to carry into effect that which must be done to set the Act of Parliament in operation, *but must mean also* those expenses which would arise out of the duties imposed on the parties by the Act)—goes on to say, that *the surplus* shall be applied under the direction of the council, *for the public benefit of the inhabitants and the improvement of the borough*,—a very large discretion, and, like every other discretion given for public purposes, to be honestly and faithfully exercised. * * * Is it to be said that, under the 92nd section of the Municipal Act, if an attempt is made to destroy the legal existence of the corporation, and the corporation have surplus funds applicable under the direction of the council for the benefit of the inhabitants (who must be considered interested in the corporation of the town of which they are inhabitants), it is an improper application of the surplus funds to defend proceedings on *quo warranto* informations, having for their object to destroy that corporation of which the individuals attacked are members, and which is the trustee of the very fund stated by the information to be held for the benefit of the public?"

It seems also to have been held, that the surplus of the borough fund may be applied in opposing in Parliament a bill for the construction of waterworks, and for the doing of acts which, if done, would interfere with the course of a river flowing through the borough, so as to prevent the efficient action of the stream in removing the sewage of the town, and thus indirectly to affect the value of rateable houses in the borough, the tolls of the market, and the other property forming the borough fund. *Attorney-General* v. *Mayor &c. of Wigan*, 23 Law J., Chanc., 429. See *Attorney-General* v. *Andrews*, 2 Hall & Twells, 431; S. C., 2 MacN. & Gordon, 225; *Bright* v. *North*, 2 Phill. 216.

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inhabitants and improvement of the borough (10);

Proviso. Provided, that it shall not be lawful for the council

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By 13 & 14 Vict. c. 42, s. 3, post, in case of any future grant of charter of incorporation to a town or borough, the expenses of and in relation thereto, and of and in relation to all elections, acts, and proceedings under the same, may be paid out of the *borough rate*.

In *Reg.* v. *Mayor &c. of Bridgwater*, 10 A. & E. 281, and in *Reg.* v. *Paramore*, Id. 286, the Court of Queen's Bench quashed an order of the town council for payment of the expenses of opposing two rules, one for a *quo warranto information* against a person duly elected a councillor, and the other for a *criminal information* against an alderman of the borough for alleged misconduct, on the ground that the expenses

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(10) The corporation cannot contract to pay money out of the corporate funds for *improvements* within the borough, except under the common seal. *Mayor &c. of Ludlow* v. *Charlton*, 6 M. & W. 815. See *Arnold* v. *Mayor &c. of Poole*, 4 Man. & Gr. 869, 5 Scott N. R. 741, in n. (4) to s. 58, ante, p. 102. Where it was alleged that there was *no surplus* of the borough fund, an injunction was granted to restrain the corporation from defraying out of it the expenses of a bill before Parliament, for improvements within the borough. *Attorney-General* v. *Mayor &c. of Norwich*, 12 Jur. 424. So also, from defraying thereout the expenses of an Act of Parliament for the improvement of a river flowing through the borough. *Attorney-General* v. *Mayor &c. of Norwich*, 21 Law J., Ch., 139. See *Attorney-General* v. *Andrews*, 2 Hall & Twells, 431; *S. C.* 2 MacN. & Gor. 225. As to the establishment in boroughs of baths and washhouses, see 9 & 10 Vict. c. 74. As to lunatic asylums for boroughs, see 16 & 17 Vict. c. 97. As to the establishment of libraries and museums, see 13 & 14 Vict. c. 65; of institutions for the promotion of literature, science, and the fine arts, see 17 & 18 Vict. c. 112; post.

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to be elected under the provisions of this Act, in any borough in which the body corporate named in

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were not incurred for *public purposes*. So, in *Reg.* v. *Mayor &c. of Leeds*, 4 Q. B. 790; Dav. & M. 143; the Court held, that the expenses of resisting a *mandamus* directed to a municipal corporation, to try a question which of two councillors was legally elected, could not be defrayed out of the borough fund; it not appearing that the rights of the corporation were in any way affected in the issue of the question. So, an order of the town council to pay out of the borough fund expenses incurred by the constables of the borough in defending themselves against indictments preferred against them, was held illegal. *Reg.* v. *Thompson*, Dav. & M. 497; 5 Q. B. 477. But *semble*, that an order for the payment of such expenses *might* be well made by the *watch committee*, with the approbation of the town council, under s. 82. *Id.* It seems that the expenses of a prosecution for a riot and assault upon the mayor, whilst engaged in the revision of the burgess list, *may* be paid out of the borough fund; but to warrant this, the opinion of the town council must be taken before the prosecution is instituted; and if this be not done, they cannot afterwards order payment of the expenses out of the fund. *Reg.* v. *Town Council of Lichfield*, 4 Q. B. 893; Dav. & M. 491. An order for payment out of the borough fund of a sum of money on account of costs incurred, with the sanction of the town council, in a petition to the Court of Chancery, with respect to the appointment of charity trustees under s. 71, was held illegal. *Reg.* v. *Mayor &c. of Warwick*, 15 L. J., Q. B., 306.

But the costs of a mandamus to the town council to assess compensation to an officer whom they had dismissed for alleged misconduct, refusing him compensation, the council having *bonâ fide* (though, as it appeared, without foundation) resisted the mandamus, on the ground of the supposed misconduct, were held to be well charged upon the borough fund. *Reg.* v. *Town Council of Lichfield*, 10 Q. B. 534.

And without impugning any of the above decisions, it is

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conjunction with the said borough in the said schedules (A.) and (B.,) before the time of the passing of this Act shall have contracted any lawful debt chargeable on any tolls or dues belonging or payable to the said body corporate, or to any member or officer thereof in his corporate capacity, or towards the satisfaction whereof such tolls or dues or any part thereof were applicable before the passing of this Act, to alter or reduce the amount to be levied and payable of such tolls or dues, or to grant for any consideration any remission of or exemption from such tolls or dues or any part thereof, unless with the consent in writing under the hands of a majority in number and amount of the creditors to whom such debt is due, until after such debt and all arrears of interest due thereon shall have been fully paid and satisfied; and in case the borough fund shall not be sufficient for the purposes aforesaid, the council of the borough is hereby authorised and required from time to time to estimate, as correctly as may be, what amount, in addition to such fund, will be sufficient for the payment of the expenses to be incurred in carrying into effect the provisions of this Act; and in order to raise the amount so estimated, the said council is hereby authorized and required, from time to time, to order a borough rate in the nature of a county rate (11) to be made within

If the borough fund be insufficient, the council shall order a rate to make up the deficiency.

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considered that cases may constantly arise, where the defence of corporate rights *should* be paid out of the public fund, as observed by the Lord Chancellor in the case above cited, of *Attorney-General* v. *Mayor &c. of Norwich.*

(11) As to the levying and application of borough rates in

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their borough, and for that purpose the council of such borough shall have within their borough all

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boroughs not within the provisions of the Municipal Corporation Acts, see 17 & 18 Vict. c. 71.

Under this section, it was held, that the council of the borough had no power to make a *retrospective rate;* and this, though it was admitted that a considerable portion of the amount assessed by such rate was for the expenses of the first year's registration, and the salary of the recorder for the first two years. *Woods* v. *Reed*, 2 M. & W. 777.

In consequence of this decision, it was provided by s. 2 of 7 Will. 4 & 1 Vict. c. 81 (which see post), that it should be lawful for the council at any time "within six calendar months next after the passing of this Act, to make and levy a borough rate, for the purpose of defraying any expenses incurred before the passing of this Act," for carrying into execution the provisions of the original Act, 5 & 6 Will. 4, c. 76. And see *Attorney-General* v. *Corporation of Lichfield*, 11 Beav. 120.

The council of a borough, previously to making a borough rate, made an estimate under this section, which contained amongst others the following items:—"Compensation to the late town-clerk, three years and a-half, 105*l.* 14*s.* 10*d.*;" "Law expenses, 800*l.*" The first of these was the amount of compensation which had been awarded to a former town-clerk, who had been dismissed by the corporation from his office. The other item was included in the estimate to meet an expected demand of the attorney to the corporation for costs and disbursements. The attorney had paid the sum of 467*l.* to a party to save the corporation from an execution, and this sum was one of the items included in the charges as a disbursement. At the time the estimate was made, the attorney had not delivered any signed bill of costs to the corporation. The council afterwards made a rate which included both the above sums. In an action brought by an overseer for a distress made upon him under a warrant of justices of the borough, for non-payment of the portion of the rate assessed upon his parish, the Court intimated a strong opinion

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the powers which any justices of the peace assembled at their general or quarter sessions in any county in England have within the limits of their commission, by virtue of an Act made in the fifty-fifth year of his late Majesty King George the Third, intituled "*An Act to amend an Act of his late Majesty King George the Second, for the more easy Assessing, Collecting, and Levying of County*

(See 55 Geo. 3, c. 51, in Appendix.)

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that this rate was not bad as being retrospective; but held that, at all events, being good upon the face of it, no objection to its validity was open to the plaintiff, as against the justices, the defendants in the action. *Jones* v. *Johnson*, 5 Exch. 862.

The council of the borough of Stockport, on the 12th of July, 1837 (previously to the passing of 7 Will. 4 & 1 Vict. c. 81), acting under this section, ordered a borough rate to be made, and assessed a certain sum on the township of C. in respect of a portion of it,—viz. the hamlet of Edgeley, which was within the borough. The plaintiff, as overseer of the township, was called upon to pay the assessment; and, having failed to do so, the defendant, as mayor of the borough, issued a warrant, under which the plaintiff's goods were seized. An action of trespass having been brought for this seizure:—*Held*, that the council had no authority to make the assessment in question. *Fernley* v. *Worthington*, 1 Man. & G. 491.

This section, though it gives the same powers to the council to make the rate as are given to justices under the County-rate Act (55 Geo. 3, c. 51; see now 7 & 8 Vict. c. 33, and 15 & 16 Vict. c. 81), and confers upon the mayor the power of levying by distress the assessment upon the overseers and other collectors of rates, contains no express provision authorising the overseers to pay such assessment out of the poor-rate, or to make any special rate to reimburse themselves the amount paid over to the borough. To supply this omission, the statute of 7 Will. 4 & 1 Vict. c. 81, was passed, which see post, and the case of *Jones* v. *Johnson*, 5 Exch. 862, in notes thereon.

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rates," or as near thereto as the nature of the case will admit, except as is hereinafter excepted (12); and all warrants required by the said Act to be issued under the hands and seals of two or more justices shall in like case be signed by the mayor, and sealed with the seal of the borough: Provided that such council shall not be empowered to receive, hear, or determine any appeal against any such rate; and if any person shall think himself aggrieved by any such rate, it shall be lawful for him to appeal to the recorder hereinafter mentioned* at the next quarter sessions for the borough in which such rate has been made, or in case there shall be no recorder within such borough, to the justices at the next court of quarter sessions for the county within which such borough is situate or whereunto it is adjacent; and such recorder or justices respectively shall have power to hear and determine the same, and to award relief in the premises, as in the case of an appeal against any county rate (13); and all such sums

Appeal.

* § 103.

(12) A borough rate is valid though not made *in public*. *Jones* v. *Johnson*, 5 Exch. 862.

(13) Under these words, the Court of Queen's Bench considered themselves bound to decide that the appeal was limited to such cases as came within the 55 Geo. 3, c. 51, s. 14, which gave that remedy only in cases of the total omission of *parishes* which ought to be included in such rate, or of the unequal apportionment of the rate among the parishes subjected to it: no appeal being given to persons aggrieved, merely as *individuals*. *Reg.* v. *Recorder of Bath*, 9 A. & E. 871. See *Rex* v. *Justices of Westmoreland*, 10 B. & C. 226, *acc.* There can be but little doubt, looking to the words "*if any person*, &c., shall think himself aggrieved," &c., and also to the fact that many large boroughs consist of one parish

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levied in pursuance of such borough rate, shall be paid over to the account of the borough fund, and,

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only, that the intention of the legislature was to give any individual aggrieved the power of questioning such rate.

The notice of appeal must state directly that the party appealing is aggrieved, or must shew facts from which it can be collected. *Rex* v. *Bond*, 6 A. & E. 905. See *Rex* v. *Blackwater*, 10 B. & C. 792, *acc.*

The Recorder having refused to hear an appeal, on the ground that the notice did not state the party to be aggrieved, the Court refused a *mandamus*, though it appeared on the affidavits on which the motion for the *mandamus* was made, that the party was aggrieved, and that the omission in the notice arose from an oversight. *Rex* v. *Bond*, 6 A. & E. 905.

Notice of such appeal is necessary. The town-clerk is the person to whom it must be given, though the borough be a county of itself, and have a separate court of quarter sessions and a clerk of the peace, under s. 103 of this Act; the town-clerk being the officer of the court making the rate, the clerk of the peace the officer of the court which hears the appeal. *Reg.* v. *Recorder of Carmarthen*, 7 A. & E. 756; 3 N. & P. 19.

It was not necessary, under stat. 55 Geo. 3, c. 51, in a notice of appeal against a county rate, to specify the grounds of appeal. *Rex* v. *Justices of Westmoreland*, 10 B. & C. 226. But see now 15 & 16 Vict. c. 81, ss. 17, 22, post, App.

If on appeal such a rate be quashed by order of the Recorder at the borough sessions, such order cannot be removed; the *certiorari* being *taken away* by s. 132 of this Act. *Reg.* v. *Justices of Ripon*, 7 A. & E. 417.

See 7 Will. 4 & 1 Vict. c. 78, s. 29, enabling overseers to levy borough rates on *parts* (exclusively of the remainder) of any parish within the limits of any borough; and also 7 Will. 4 & 1 Vict. c. 81, s. 3, post, regulating the collection of borough and watch-rates, in the cases of parishes partly within and partly without any borough, and also of extra-parochial places wholly or partly within any such borough. This last enactment is, however, repealed, as to the making, &c.,

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subject to the provisions hereinbefore contained, shall be applied to all purposes to which before the passing of this Act a borough rate or county rate was by law applicable in such borough or county: Provided, that in every case in which before the passing of this Act any rate might be levied in any borough, or in any parish or place made part of any borough under the provisions of this Act, for the purpose of watching solely by day or by night, or for the purpose of watching by day or by night conjointly with any other purpose, it shall be lawful for the council of such borough to levy a *Watch Rate* (14) sufficient to raise any sum not greater than the average yearly sum, which during the last seven years, or where such rate shall not have been levied during seven years, then during such less number of years as such rate shall have been levied, shall have been expended in the maintenance and establishment of watchmen, constables, patrol, or policemen within the district in which such rate was levied, and for that purpose the council shall have all the powers hereinbefore given to the council in the matter of the borough rate; and where any part of any borough shall not at the time of the passing of this Act be within the provisions of the Act authorising the levy of such rate for watching as aforesaid, it shall be lawful for the council, from time to

Proviso as to watch-rates.

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of county and borough rates in divided parishes or places, by s. 6 of the 12 & 13 Vict. c. 65, post. See also 8 & 9 Vict. c. 110, post.

(14) See post, stats. 2 & 3 Vict. c. 28, 3 & 4 Vict. c. 28, and 8 & 9 Vict. c. 110.

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time, to order that such part, or so much thereof as to the council shall seem fit, shall be rated to the watch-rate in like manner as other parts of the borough to be specified in such order, and such watch-rate thereupon shall be levied within the part mentioned in such order in like manner as in the other parts of the borough so specified, and all such sums levied in pursuance of such watch-rate shall be paid over to the account of the borough fund: Provided always, that no such order as last aforesaid shall be made for rating to such watch-rate any part of any borough in which at the time of passing this Act such rate as aforesaid shall not be levied, and which is more than two hundred yards distant from any street or continuous line of houses which shall be regularly watched within the borough under the provisions of this Act: Provided also, that nothing in this Act contained shall be construed to render liable to the payment of any debt contracted before the passing of this Act by any body corporate, any part of the real or personal estate of the said body corporate which before the passing of this Act was not liable thereto, or to authorise the levy of any rate within any part of any borough for the purpose of paying any debt contracted before the passing of this Act, which before the passing of this Act could not lawfully be levied therein towards the payment of the same.

Proviso as to parts not before rated, and distant 200 yards, &c.

Account of receipts and disbursements to be kept, audited, and published.

XCIII. And be it enacted, that the treasurer of every borough shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters for which such sums shall have been received and paid;

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and the books containing the accounts shall, at all seasonable times, be open to the inspection of any of the aldermen or councillors of such borough; and all the accounts (1), with all vouchers and papers relating thereto, shall, in the months of March and September in every year, be submitted by the treasurer of the borough to the auditors hereinbefore* provided to be elected, and to such member of the council as the mayor shall name on the first day of March in every year, or, in case of extraordinary vacancy, within ten days next after such vacancy, for the purpose of being examined and audited, from the first day of September in the year preceding to the first day of March; and from the first day of March to the first day of September in the year in which the said auditors were elected and named; and if the said accounts shall be found to be correct, the auditors shall sign the same: and after such accounts shall have been so examined and audited in the month of September in every year, the trea-

* § 37.

(1) By this section, the corporate accounts are to be twice in the year audited; and after the second audit, in September in each year, are to be printed and published. By 6 & 7 Will. 4, c. 104, s. 10, it is further required, that a statement of all monies received and expended by or an account of the corporation be transmitted before the 1st day of March in each year to the Secretary of State; and that an abstract of such accounts be laid before Parliament. By this last-mentioned section, such accounts were to be made up to the 1st of January in each year, at which time the accounts of the last three months would not have been audited; but that provision has been repealed by 7 Will. 4 & 1 Vict. c. 78, s. 43, by which "every such account shall be made up to the last period of audit of the said receipt and expenditure, and not further or otherwise."

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surer shall make out in writing, and shall cause to be printed, a full abstract of his accounts for the year; and a copy thereof shall be open to the inspection of all the rate-payers of such borough; and copies thereof shall be delivered to all rate-payers of such borough applying for the same, on payment of a reasonable price for each copy.

Power of sale and leasing restrained.

XCIV. And be it enacted, that it shall not be lawful for the council of any body corporate to be elected under this Act, to sell, mortgage, or alienate the lands, tenements, or hereditaments of the said body corporate, or any part thereof, except in pursuance of some covenant, contract, or agreement, *bonâ fide* made or entered into on or before the fifth day of June in this present year, by or on behalf of the body corporate of any borough, or of some resolution duly entered in the corporation books of such body corporate on or before the said fifth day of June, or to demise or lease, except in pursuance of some covenant, contract, or agreement, *bonâ fide* made or entered into on or before the said fifth day of June by or on the behalf of such body corporate, or in pursuance of some resolutions duly entered in the corporation books of such body corporate on or before the said fifth day of June, or except in the cases hereinafter mentioned, any lands, tenements, or hereditaments of such body corporate, or any part thereof, or to enter into any new covenant, contract, or agreement (except in the cases hereinafter mentioned) for demising or leasing any such lands, tenements, or hereditaments, or any part thereof, for any term exceeding thirty-one years from the time when such lease shall be made, or, if made in pursuance

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of a previous agreement, then from the time when such agreement shall have been entered into; and in every lease which the said council is not hereby restrained from making, there shall (except in the cases hereinafter mentioned *) be reserved and made payable, during the whole of the term thereby granted, such clear yearly rent (1) as to the council shall appear reasonable, without taking any fine for the same: Provided nevertheless, that in every case in which such council shall deem it expedient to sell and alienate, or to demise and lease (2), for a longer term than thirty-one years, or upon different terms and conditions than those hereinbefore mentioned,

* § 95, 96.

Proviso for application to the Lords of the Treasury.

(1) This rent may be reserved payable at the usual quarter-days, or half-yearly; for it is not the less a yearly rent because payable in particular portions. Co. Litt. 44. a., and see *Dean of Worcester's case*, 6 Rep. 37.

(2) The word "*mortgage*," which occurs in the earlier part of this section, is here omitted. It was contended, therefore, by some, that under this proviso no portion of the corporate property could be *mortgaged*. This point is, however, now settled by 6 & 7 Will. 4, c. 104, s. 2, which provides, that the power of disposition given by this section shall extend to the disposition of such lands, &c. "whether by any absolute sale, or by way of exchange, mortgage, or lease, and to every other disposition of the same whatsoever, which shall be so approved of as aforesaid."

See s. 15 of the Lands Clauses Consolidation Act, 8 & 9 Vict. c. 18, which prohibits municipal corporations from selling, for the purpose of any special Act [authorizing the taking of lands for any undertaking], without the approbation of the Treasury, any lands which they could not before have sold without such approbation, other than such lands as the company are by the powers of that or the special Act empowered to purchase or take compulsorily.

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any of the said lands, tenements, or hereditaments, it shall be lawful for such council to represent the circumstances of the case to the lords commissioners of his Majesty's Treasury; and it shall be lawful for such council, with the approbation of the said lords commissioners, or any three of them, to sell, alienate, and demise any of the lands, tenements, and hereditaments of the said body corporate, in such manner and on such terms and conditions as shall have been approved by the said lords commissioners: Provided always, that notice of the intention of the council to make such application as aforesaid shall be fixed on the outer door of the town-hall, or in some public and conspicuous place within the borough, one calendar month at least before such application; and a copy of the memorial intended to be sent to the said lords commissioners shall be kept in the town-clerk's office during such calendar month, and shall be freely open to the inspection of every burgess at all reasonable hours during the same (3).

One month's notice of such application must be given.

XCV. Provided always, and be it enacted, that in all cases in which any body corporate shall on the fifth day of June in this present year have been bound or engaged by any covenant or agreement, express or implied, or have been enjoined by any deed, will, or other document, or have been sanctioned or warranted by ancient usage or by custom or practice, to make any renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known

The council of any borough under this Act authorised to renew leases, &c.

(3) See s. 97, note (1), post.

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or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, and years determinable after the lapse of any number of years, at a fine certain, or under any special or specific terms or conditions, and also in all cases in which any body corporate shall theretofore have ordinarily made renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or upon the dropping of any life or lives, upon the payment of an arbitrary fine, it shall be lawful for the council of such borough to renew such lease for such term or number of years, either absolutely or determinable with any life or lives, or for such life or lives, and at such rent, and upon the payment of such fine or premium, either certain or arbitrary, and with or without any covenant for the future renewal thereof, as such body corporate could or might have done in case this Act had not been passed.

Leases of certain buildings, and of ground for building on, or for making gardens, &c. may be made for 75 years.

XCVI. Provided nevertheless, and be it enacted, that in any of the instances hereinafter mentioned it shall be lawful for the council from time to time to demise and lease, or to enter into any contract or agreement for demising and leasing, any of the said lands, tenements, or hereditaments, to any person, body politic, corporate, or collegiate, for any term not exceeding seventy-five years from the time of making such lease or agreement; (that is to say), of tenements or hereditaments the greater part of the yearly value of which shall at the time of making the lease or agreement consist of any building or

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buildings, of land or ground proper for the erection of any houses or other buildings thereupon, with or without gardens, yards, curtilages, or other appurtenances to be used therewith, and, where the lessee or intended lessee shall covenant or agree to erect a building or buildings thereon of greater yearly value than such land or ground, of land or ground proper for gardens, yards, curtilages, or other appurtenances to be used with any other house or other building erected or to be erected on any such ground, belonging either to such body corporate or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building (9).

Collusive purchases, sales, and demises of corporate property since the 5th of June, 1835, for undue

XCVII. And be it enacted, that it shall be lawful for the council first to be elected in any borough under the provisions of this Act to call in question all purchases, sales, leases, and demises not made in pursuance of some such bonâ fide covenant (1), con-

(9) By this section a power is given to the council to demise and lease, for 75 years, certain buildings and building ground, &c.; but no mention is made respecting either the fine to be taken or the rent to be reserved. By s. 94, the council are required, in leases made under that section, to reserve a yearly rent, without any fine being taken. In order to remove doubts which had arisen, it has been provided by s. 2 of 6 & 7 Will. 4, c. 104, that the power given to the council by this section shall extend to leases, "*either* at a reserved rent or fine, *or both*, as the council shall think fit."

(1) The corporation of Liverpool, *after* the passing of this Act, but before the election of the new council, passed a resolution for the appropriation of a portion of the corporate property for the purpose of endowing certain churches and

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tract, agreement, or resolution made or entered into as aforesaid before the said fifth day of June, and

consideration, may be set aside.

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chapels of the Established Church within the borough, with permanent and fixed stipends: *Held*, on application to the Court of Chancery to restrain them from so doing, that such an appropriation was not warranted by this Act; that, after the passing of it, the corporate property became, under sect. 92, subject to certain public trusts, to be exercised by the new council only in the manner and for the purposes prescribed thereby. That this, therefore, was a breach of trust over which the Court still might exercise its jurisdiction, notwithstanding the *special remedies* (even supposing them applicable) provided by this section. *Attorney-General* v. *Aspinall*, 1 M. & Cr. 163, overruling the decision of the Master of the Rolls, 1 Keen, 513.

In accordance with the above judgment, it was held, in *Attorney-General* v. *Wilson*, 9 Sim. 30 (affirmed by the Lord Chancellor, 1 Cr. & Ph. 1), (the case of the Leeds corporation), that the Court, notwithstanding the remedies provided by this section, has full power and jurisdiction to relieve against *collusive alienations* of corporate property. In the same case, it was also held that this Act has not destroyed the individuality of the old corporations (see note to s. 6, ante), though it has varied the mode of electing certain of their officers, and has defined in what mode corporate funds shall be applied (see s. 92, ante), "so that there is now a sort of public trust affixed to that which before the Act was *mere corporate property*, capable of alienation according to the uncontrolled will and pleasure of the corporate body."

In that case, the corporation, before leave obtained to bring in the Municipal Corporation Act, but after notice had been given in the House of Commons of the intention of the government to introduce such a measure, passed a resolution that a sum of stock and certain turnpike bonds belonging to them should be transferred to certain persons, "so as to vest in them, and to divest the corporations of, all power and control over the same;" and on the same day (May 30, 1835), a deed of transfer was accordingly executed by the corporation.

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all contracts for the purchase, sale, lease, or demise of any lands, tenements, and hereditaments, and all divisions and appropriations of the monies, goods, and valuable securities, or any part of the real or personal estate, of which on or before the fifth day of June in this present year the body corporate of which they are the council, whether in their own right, or as trustees for charitable or other purposes, was seised or possessed, which shall have been made or contracted between the said fifth day of June and the day of the declaration of their election; and for that purpose, if it shall appear to the said council that there is ground for believing that any such purchase, sale, lease, or demise, or such contract, or such division or appropriation of the premises, was collusively made for no consideration, or for an inadequate consideration, it shall be lawful for the council of such borough, at any time within six calendar months next after the first election of councillors under this Act shall have been declared in such borough, upon notice of their intention being first given

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In November following, the transferees executed a deed, declaring the purposes to which the property was to be applied, which were for the benefit of certain charitable institutions, and the endowment and enlargement of churches within the borough. It was held that the resolution and deed of transfer did not divest the corporation of their interest in the trust property.

It was held also, that if members of a corporation contrive to scheme to dispossess the corporation of its property, they are *primâ facie personally* liable.

See also *Attorney-General* v. *Corporation of Leicester*, 9 Beav. 546; *Attorney-General* v. *Corporation of Lichfield*, 11 Beav. 120.

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in the London Gazette, and also affixed on the outer door of the town-hall or in some public place within the borough, to cause the value of the lands, tenements, hereditaments, and premises in question to be inquired of and found by a jury of twelve indifferent men of the county in which, or adjoining to which in the case of Berwick-upon-Tweed, and of all counties of cities and towns corporate, such lands, tenements, hereditaments, or premises do lie; and in order thereto the said council is empowered to summon and call before such jury all persons having the custody and possession of any deed or agreement concerning the said lands, tenements, hereditaments, and premises made or entered into since the said fifth day of June, and to cause all such deeds and agreements to be produced before the said jury, and examined by them, and to examine upon oath every person who shall be thought necessary to be examined (which oath the mayor is hereby empowered to administer); and the council shall, by ordering a view or otherwise, use all lawful means for the information as well of themselves as of the said jury in the premises; and the jury shall find the value of the said lands, tenements, hereditaments, and premises, and the consideration which shall have been given, and also that which ought of right to have been given, for the purchase, sale, lease, demise, or appropriation thereof, according to the terms of such purchase, sale, lease, demise, contract, or appropriation, and taking into account all the circumstances under which the same shall have taken place; and if the jury by their oaths shall find that no consideration, or a consideration less than that which they shall have so found to be the value, which ought therefore

Jury may be summoned.

If jury find no consideration,

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to have been given, shall have been collusively given or contracted to be given by the terms of any such purchase, sale, lease, demise, contract, or appropriation, the party to such purchase, sale, lease, demise, contract, or appropriation shall have his option either to re-convey and restore the lands, tenements, hereditaments, and premises in question, and to abandon the contract to which he shall have been party, upon receipt in each case of the consideration, if any, which he shall have given for the same, or to give therefore in each case such additional consideration, so that the whole consideration given shall be that which ought of right to have been given, so found by the jury as aforesaid; and in every such case as last aforesaid the additional consideration given or to be given shall be indorsed on the original deed or conveyance (2); and unless he shall so do within one calendar month next after the finding of the jury, every such purchase, sale, lease, demise, contract, and conveyance, shall be absolutely void and of none effect as against the said body corporate and their successors; and in every case in which any such contract shall have been abandoned as aforesaid, or in which any such purchase, sale, lease, de-

party may abandon his contract, or pay additional consideration.

Additional consideration to be indorsed on original deed.

(2) A lessee of a corporation elected to pay an increased rent in pursuance of the finding of a jury under this section, and indorsed the finding of a jury on his part of *the original lease*. In an action for the increased rent, the lessee was compelled to produce his part of the lease for the inspection of the corporation, and to allow a copy of the indorsement to be taken, although it was admitted that the original lease was still in possession of the corporation, as well as the inquisition taken before the jury. *Mayor of Arundel* v. *Holmes*, 8 Dowl. P. C. 118.

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mise, contract, or conveyance shall become void and of none effect, under the provisions of this Act, the party who would otherwise have had the benefit of the same shall be remitted to his former estate, title, and interest (if any) in the premises as if no such contract, purchase, sale, lease, or demise had been made or entered into; and for summoning and returning such juries, and for imposing fines on the sheriff, his deputy, bailiff, or agent, and on the persons summoned and returned on the said jury, and on any person required to give evidence, who shall in this behalf contravene the provisions of this Act, the council of every such borough shall have all the powers given in that behalf to the trustees or commissioners of any turnpike road by an Act made in the third year of his late Majesty George *the Third**, intituled *An Act to amend the General Laws now in being for regulating Turnpike Roads in that part of Great Britain called England*; and all the costs of the said jury, and of all witnesses tendered by the said council to be examined before the said jury, shall in every case be borne by the council, and paid out of the borough fund: Provided nevertheless, that it shall be lawful for his Majesty, if he shall think fit, by the advice of his privy council, upon petition to him setting forth the special circumstances under which any purchase, sale, lease, demise, contract, or appropriation of any of the said lands, tenements, hereditaments, and premises shall have been made since the said fifth day of June, to order that the same shall not be called in question under the provisions of this Act; and in such case as last aforesaid the same shall not be called in question or set aside or affected under the provisions of this Act:

* So in King's printer's copy, (3 Geo. 4, c. 126.)

Costs to be paid out of borough fund.

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Provided always, that in every case in which such petition shall have been presented, it shall be lawful for his Majesty, if he shall think fit, to enlarge the time within which (in case his Majesty shall not think fit to make such order as aforesaid) the council may have power as aforesaid to call in question any purchase, sale, lease, demise, contract, or appropriation referred to in such petition.

His Majesty's commission may be issued for certain persons to act as justices in any of such boroughs.

XCVIII. And be it enacted, that it shall be lawful for his Majesty, from time to time, to assign to so many persons as he shall think proper his Majesty's commission to act as justices of the peace in and for each borough, and in and for each of the counties of cities and towns respectively named in the said schedule (A.), and in and for such of the boroughs in the said schedule (B.) to which his Majesty may be pleased upon the petition of the council thereof to grant a commission of the peace: Provided nevertheless, that every person so to be assigned shall reside within the borough for which he shall be so assigned, or within seven miles of such borough, or of some part thereof, during such time as he shall act as a justice of the peace in and for such borough (1).

Proviso.

Council may make a bye-

XCIX. And be it enacted, that if the council of

(1) See post, s. 101, by which it is provided that the justices appointed under this Act need not be qualified by estate, nor be burgesses of the borough in and for which they may be assigned to act; but they must reside in the borough, or within seven miles of it. The distance of seven miles, by s. 9 of this Act, is to be measured by the nearest public road or way by land or water.

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any borough shall think it requisite that a salaried police magistrate or magistrates be appointed within such borough, such council is hereby empowered to make a bye-law fixing the amount of the salary which he or they are to receive in that behalf; and such bye-law so made by any council as aforesaid shall be transmitted to one of his Majesty's principal Secretaries of State; and it shall be lawful thereupon for his Majesty, if he shall think fit, to appoint one or more fit persons, according to the number fixed in the said bye-law (being barristers at law of not less than five years standing), to be during his Majesty's pleasure police magistrate or magistrates and a justice or justices of the peace for such borough, and to direct that such sum shall be paid quarterly out of the borough fund of such borough as will be sufficient to pay such yearly salary to each of the justices so assigned as last aforesaid, not exceeding in the whole the salary mentioned in the prayer of such petition, clear of all fees or deductions, as to his Majesty shall seem fit; and the treasurer of such borough shall thereupon pay to each justice so assigned as last aforesaid, out of the borough fund of such borough, the salary so directed to be paid, by four equal quarterly payments, and in the same proportion up to the time of the death of such justice or his ceasing to act under such assignment as aforesaid: Provided that in every case of vacancy of the office of police magistrate in any borough aforesaid no new appointment of police magistrate in such borough shall be made until the council shall again make application to one of his Majesty's principal Secretaries of State in that behalf, and as in the case of the first appointment of a police magistrate in such borough.

Law, on which the Crown may appoint salaried justices.

In case of vacancy, fresh application to be made by the council.

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Council to provide a police office.

C. And be it enacted, that the council of every borough to which a separate commission of the peace shall be granted under the provisions of this Act shall be authorised and required to provide and furnish one or more fit and suitable office or offices, to be called "the police office" or "offices" of the borough, for the purpose of transacting the business of the justices of such borough, and to pay from time to time out of the borough fund such sums as may be necessary for providing, upholding, and furnishing, and for the necessary expenses of such police office or offices: Provided that no room in any house licensed as a victualling house or alehouse shall be used for the purposes of any such police office.

Justices need not be qualified by estate.

CI. And be it further enacted, that every person assigned to keep the peace within any borough under the provisions of this Act, or any of them, shall, during the continuance of such assignment, execute the duties of a justice of the peace in and for the borough for which he shall have been so assigned, although he may not have such qualification by estate as is required by law in the case of other persons being justices of the peace for a county, provided that such person be not disqualified by law to act as a justice of the peace for any other cause, or upon any other account than in respect of estate (1), and

(1) As a borough justice will now act by virtue of the Queen's commission, it seems, with the exception of the qualification by estate, he must in all other respects be qualified as in the case of other justices of the peace. A *sheriff* cannot act as a justice during the year of his shrievalty,

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although such person may not be a burgess of the borough in and for which he shall have been assigned to act as a justice of peace; and that every summons for the appearance of any person, or warrant to compel such appearance, or warrant for the apprehension of any person charged with any offence, or search warrant, issued by any justice of the peace acting in and for any borough in any matter within his jurisdiction, may be respectively served and executed within any county in which the said borough shall be situated, or within any distance not exceeding seven miles* from such borough, and within such limits as aforesaid shall have the same force and effect as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same shall be served or executed, any law, statute, charter, or usage to the contrary notwithstanding; and every such summons and warrant shall and may be lawfully served or executed within such limits as aforesaid by the constable or special constable to whom the same shall be directed: Provided nevertheless, that no such person, by virtue of such assignment, shall act as a justice of the peace at any court of

Need not be a burgess.

Summons may be served in the county in which the borough is situate, or within seven miles.

* See § 9, supra.

Such justices not to sit in courts of gaol delivery, &c.

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by stat. 1 M. sess. 2, c. 8, s. 2. See also Dalt. c. 3, and 3 Burn's Justice, c. 2, title, "Justice of the Peace."

A *coroner*, also, it is said, cannot be a justice. Dalt. c. 3. And by 5 Geo. 2, c. 18, s. 2, no practising attorney, solicitor, or proctor, can be or act as a justice of the peace for *any county*. But by s. 4 of the same statute it is expressly declared, that the Act is "not to extend to any city or town being a county of itself, or to any other city, town, cinque port, or liberty, having justices by charter, commission, or otherwise."

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gaol delivery or general or quarter sessions, or in making or levying any county rate, or rate in the nature of a county rate(9).

Justices to appoint a clerk, who shall not be clerk of the peace, or an alderman or councillor, nor be concerned in the prosecution of offenders committed by the borough justices.

CII. And be it enacted, that it shall be lawful for the justices of every borough to which a separate commission of the peace shall be granted as aforesaid, at their first or any other meeting, and they are hereby respectively required, to appoint a fit person to be the clerk to the justices of such borough(1), to be removeable at their pleasure, and so as often as there shall be a vacancy in the said office(2) of clerk

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(9) See 6 & 7 Will. 4, c. 104, s. 4, empowering such persons to act as justices of the peace in levying any county rate, or rate in the nature of a county rate, *made before the 1st of May*, 1836.

The appointment of *overseers* for a parish within a borough was held to be vested in the mayor, bailiffs, and other head officers, being a justice or justices, and not in the justices of the peace at large for the borough, under the 43 Eliz. c. 2, s. 8. *Reg.* v. *Preston*, 12 Q. B. 816, 3 New Sess. Ca. 313. But see now stats. 12 & 13 Vict. c. 8 (which vests the exclusive right of appointment of the overseers in the justices of the peace), 12 & 13 Vict. c. 64, and 15 & 16 Vict. c. 38, whereby all justices having jurisdiction to act in any matter arising within cities and boroughs are empowered to act in all matters relating to the relief of the poor therein.

(1) *Semble*, that under this section the justices must jointly appoint a person to act as their clerk; and that it is not competent for each, as formerly, and as still is the case in counties, to appoint his own clerk.

See 12 & 13 Vict. c. 18, post, providing for the holding of *petty sessions* in boroughs.

(2) The word "office" is clearly not employed here in the strict sense in which it is used in our law books, but in the general sense of a place to which duties and profits are

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to the justices by death, resignation, removal, or otherwise: Provided that it shall not be lawful for the said justices to appoint or continue as such clerk to the justices any alderman or councillor of such borough, or clerk of the peace of such borough, or the partner of such clerk of the peace, or any clerk or person in the employ of such clerk of the peace: Provided also, that it shall not be lawful for the said clerk to the justices, by himself or his partner, to be directly or indirectly interested or employed in the prosecution of any offender committed for trial by the justices(3) of whom he shall be such clerk as aforesaid, or any of them, at any court of gaol delivery or general or quarter sessions; and any person being an alderman or councillor, or clerk of the peace of any borough, or the partner or clerk or in the employ of such clerk of the peace, who shall act as clerk to the justices of such borough, or shall otherwise offend in the premises, shall for every such offence forfeit and pay the sum of one hundred pounds, one moiety thereof to the treasurer of such borough, to be paid over to the credit and account of the borough fund of such borough, and the other

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attached. Per *Coleridge*, J., 6 A. & E. 348. See ante, s. 66, note (1), p. 116.

(3) *Semble*, that notwithstanding these words, in cases of committals by the coroner or the county magistrates, the clerk to the justices is competent to conduct the prosecutions. And a clerk to the justices, employed in the prosecution of a person committed by such justices, is not liable to the penalty of 100*l.*; for he is not specifically named in the penalty clause, though he is in the prohibition clause. *Coe* v. *Lawrance*, 1 E. & B. 516.

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moiety thereof, with full costs of suit, to any person who will sue for the same in any of his Majesty's Courts of record at Westminster.

His Majesty may grant a separate court of quarter sessions, and appoint a recorder, in certain boroughs.

CIII. And be it enacted, that the council of every borough which shall be desirous that a separate court of quarter sessions of the peace shall be or continue to be holden in and for such borough shall signify the same by petition to his Majesty in council, setting forth the grounds of the application, the state of the gaol(1), and the salary which they are willing to pay to the recorder in that behalf; and it shall be lawful for his Majesty, if he shall be pleased, thereupon to grant that a separate court of quarter

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(1) By these words it appears to be assumed, that every borough applying for a grant of a separate court of quarter sessions would have a gaol. *Semble*, that the grant of a court of quarter sessions, under this section, would not authorise the building of a gaol in a borough which had not any gaol previously. See post, s. 114, n. (3), p. 210, *Reg.* v. *Justices of Lancashire*, 11 A. & E. 144, 3 P. & D. 652, and cases there cited.

In *Reg.* v. *Bourchier*, 3 Q. B. 641, 2 G. & D. 737, the Court of Queen's Bench, upon a certiorari bringing up a county rate, refused to go into the question of the validity of the grant of quarter sessions, on the ground that there was no gaol in the borough of Birmingham at the time of such grant, holding that the fact of there being no gaol could not, in such a proceeding, be set up against the grant of quarter sessions, no objection being made on the part of the Crown, or of any inhabitant of the borough; and that the proper mode of raising such an objection was by *scire facias* to repeal the grant.

See now the stats. 5 & 6 Vict. c. 111, s. 1, 11 & 12 Vict. c. 93, and 13 & 14 Vict. c. 42, post.

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sessions of the peace shall be thenceforward holden in and for such borough, to appoint for such borough, or for any two or more of such boroughs conjointly, a fit person, being a barrister at law of not less than five years standing, who shall be and be called the recorder of such borough or boroughs, and shall hold such office during his good behaviour, and upon any vacancy in any such office to appoint another fit person, being a barrister at law of not less than five years standing, to be the recorder in the place of the person so making such vacancy; and the council of every such borough shall appoint a fit person to be clerk of the peace during his good behaviour; and the recorder for the time being of any borough shall be a justice of the peace of and for such borough, although he may not have such qualification by estate as is required by law in the case of any other person being a justice of the peace for a county; and such recorder shall have precedence in all places within the borough of which he may be the recorder next after the mayor thereof; and in such case it shall be lawful for his Majesty to direct that an annual salary, not exceeding the sum stated in the petition of the council, shall be paid to such recorder by the treasurer of such borough, out of the borough fund: Provided always, that no person being such recorder as aforesaid shall be eligible to serve in Parliament for such borough, nor shall he be an alderman, councillor, or police magistrate of such borough: Provided nevertheless, that nothing in this Act contained shall be construed to disqualify any such recorder from being appointed a barrister to revise any list of voters under the provisions of an Act passed in the second year of his Majesty,

Council to appoint clerk of the peace.

Recorder to be a justice of the peace for the borough;

but not a member of Parliament for the borough, alderman, councillor, or police magistrate.

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2 Will. 4, c. 45.

intituled *An Act to amend the Representation of the People in England and Wales*, or from being eligible to serve in Parliament, otherwise than is hereinbefore provided: Provided also, that in every borough in and for which a separate court of general or quarter sessions of the peace is now holden, and of which the present recorder or deputy recorder is a barrister of five years standing, such recorder or deputy recorder, being qualified as aforesaid, shall be continued or appointed recorder under the provisions of this Act: Provided also, that in the case of sickness or unavoidable absence(2), the recorder of any borough shall be empowered, under his hand and seal, with the consent of the council(3) of such

Proviso as to appointment of deputy.

(2) It is by express enactment only that *a deputy* can be appointed. See Com. Dig. Officer (D. 2), where it is stated that no judicial officer can appoint a deputy; but if a judicial office be granted, *tenend' per se vel deputatum*, he may then appoint a deputy. It was under this form of grant that the Recorders of boroughs, and the Stewards of borough courts, were, previously to this Act, enabled so frequently to appoint deputies. It is said, however, in 4 Inst. 126, 128, that where ancient usage allows a deputy, a judicial officer may make one, as in the case of a constable or earl marshal. See also the judgment of *Holroyd*, J., in *Claridge* v. *Evelyn*, 5 B. & Ald. 87; and *Jones* v. *Williams*, 2 Dowl. N. S. 938.

(3) The necessity of obtaining this consent was found to be productive of great inconvenience, where the Recorder was unable to attend, in consequence of any sudden emergency happening three days only before the sessions; and accordingly, by 6 & 7 Vict. c. 89, s. 7, this last proviso is repealed, and, by s. 8, the power is given to the Recorder alone, subject to a proviso that the sessions shall not be deemed to have been illegally held, by reason of the cause of absence of the Recorder not being deemed to be *unavoidable* within the meaning of the Act.

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borough, to appoint a deputy recorder, being a barrister of five years standing, to act for him at the quarter sessions of the peace then next ensuing, and no longer or otherwise.

Recorder and justices to make declaration before acting.

CIV. Provided nevertheless, and be it enacted, that no recorder or person assigned to keep the peace within any such borough shall be capable of acting as recorder or justice of the peace within such borough, until he shall have taken the oaths (1) provided to be taken by justices of the peace, except the oath as to qualification by estate, and until he shall have made before the mayor, or before any two or more of the aldermen or councillors of such borough (who is and are hereby authorised and required to administer the same), a declaration in the following form; (that is to say)—

"I, A. B., do hereby declare, that I will faithfully and impartially execute the office of recorder [*or* justice of the peace] for the borough of , according to the best of my judgment and ability."

Sessions of the peace to

CV. And be it enacted, that the recorder of every

(1) By s. 3 of 6 & 7 Will. 4, c. 105, post, it is provided that the oaths required to be taken by the Recorder or person assigned to keep the peace may be taken before the mayor or any two aldermen or councillors of the said borough, "without suing out or obtaining any special dedimus, or other commission or authority for administering such oaths." See post, 1 & 2 Vict. c. 5, further extended by 1 & 2 Vict. c. 15, for the relief of Quakers, Moravians, and Separatists, elected or appointed to municipal offices; and 8 & 9 Vict. c. 52, as to the declaration to be made by Jews.

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be held for the borough, of which the recorder to be the sole judge.

borough shall hold once in every quarter of a year, or at such other and more frequent times as the said recorder in his discretion may think fit, or as his Majesty shall think fit to direct, a court of quarter sessions of the peace in and for such borough, of which court the recorder of such borough shall sit as the sole judge; and such court of quarter sessions of the peace shall be a court of record, and shall have cognizance of all crimes, offences, and matters whatsoever cognizable by any court of quarter sessions of the peace for counties in England(1), and

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(1) Under these words, many questions have arisen as to the extent of the Recorder's jurisdiction. Much doubt was originally entertained, and great difference of opinion existed, whether *appeals against orders of removal* made by borough justices could be tried at the borough quarter sessions, in the face of the express enactment of 8 & 9 Will. 3, c. 30, s. 6, which provides that such appeals shall be heard at the sessions of the *county "and not elsewhere."* In the year 1841, the question was brought under the consideration of the Court of Queen's Bench, who held that the Recorder had, under the above section, *exclusive jurisdiction* to try and determine such appeals. *Reg.* v. *Justices of Salop*, 1 G. & D. 146, 2 Q. B. 85; see *Reg.* v. *Justices of Suffolk*, 1 G. & D. 146, 2 Q. B. 72, *acc.*

In the case of *Reg.* v. *St. Edmund's Sarum*, 1 G. & D. 137, 2 Q. B. 72, argued shortly before the two last-mentioned cases, the Court had held that such an appeal *might* be tried at the borough quarter sessions, but expressed no opinion as to the question of exclusive jurisdiction.

In the case of *Reg.* v. *Recorder of Hull*, 8 A. & E. 639, it was determined that the Recorder of the borough of Kingston-upon-Hull, which is a county of itself, has the powers relating to the inspector of weights and measures, given by 5 & 6 Will. 4, c. 63, s. 17, to the justices in every county in quarter sessions assembled. The judgments delivered by

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the said recorder shall have power to do all things necessary for exercising such jurisdiction, notwith-

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Lord *Denman* and Mr. Justice *Patteson*, in the last case, would appear to sanction the opinion, that, *in all boroughs*, whether counties of themselves or not, having a separate court of quarter sessions under this Act, the Recorder, under the words of the above section, would have the power of appointing such inspector. (See 16 & 17 Vict. c. 79, s. 6, post, which exempts boroughs appointing inspectors of weights and measures from liability to contribute to county rate in respect of weights and measures in the county in which such boroughs are situate).

Upon apparently the same principle it was held, in *Reg.* v. *Inhabitants of St. Lawrence, Ludlow*, 11 A. & E. 170, that the Recorder might try an appeal against an order of borough justices, directing payment of the expenses incurred by removing a pauper lunatic to an asylum, under 9 Geo. 4, c. 40, s. 38. This decision might have been rested on the fact, that the 61st section of 9 Geo. 4 declares that the word "county" shall include "town corporate;" but Lord *Denman*, after noticing that, observes, "The powers of the Recorder as a court of quarter sessions, are enacted by s. 105 of 5 & 6 Will. 4, c. 76, and give him cognizance of '*all matters whatsoever cognizable by any court of quarter sessions of the peace for counties in England*,' among which, unquestionably, the present is one."

The result, therefore, of the above cases appears to be, that all matters not expressly excepted by the proviso to this section, cognizable by a court of quarter sessions for a county, are within the jurisdiction of the Recorder of a borough (whether it be a county of itself or not) appointed under this Act.

The *indictable offences* which are now cognizable by courts of quarter sessions are defined by the 5 & 6 Vict. c. 38.

Where an order of removal of a pauper from a parish within a borough is made by county justices having, within the borough, concurrent jurisdiction with the borough justices, the appeal, under 4 & 5 Will. 4, c. 76, s. 105, is to the *borough* and not to the *county* sessions. *Reg.* v. *Recorder of*

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standing his being such sole judge, as fully as any such last-mentioned court: Provided nevertheless(2),

Recorder not to make or

Liverpool, 15 Q. B. 1070. And the notice of appeal is sufficient under 11 & 12 Vict. c. 31, s. 9, although it erroneously state that the appeal will be made to the county sessions. *Ib.*

So, an appeal, under 8 & 9 Vict. c. 126, s. 62, against an order for the maintenance of a lunatic pauper, (which by that section is to be "in like manner as if the same were a warrant of removal") must be to the quarter sessions having jurisdiction in the place from which the pauper was removed to an asylum; and therefore, where the removal is from a parish within a borough, the appeal must be to the borough and not to the county sessions. *Reg.* v. *Justices of Lancashire*, 21 L. J., M. C., 164. (See *Reg.* v. *Justices of Lancashire*, 12 Q. B. 305, which seems to be overruled by the above case).

By 6 & 7 Will. 4, c. 105, s. 2, power is given to try borough prisoners at the borough sessions, though they may have been committed to a county prison under a contract, notwithstanding such gaol be situate *more than two miles* from the borough. See sections 114 and 115 of this Act. See also 5 Geo. 4, c. 85.

The recorder of a borough has power to reserve a case for the Court for Crown Cases Reserved, under 11 & 12 Vict. c. 78. *Reg.* v. *Masters*, 3 New Sess. Ca. 326; 1 Den. C. C. R. 332.

The authority of the Recorder of a borough is not determined by the coming of the judges into the county, and acting under their commissions of oyer and terminer and general gaol delivery; he may therefore hold his quarter sessions of the peace during the time of the assizes in the same county. *Smith* v. *Reg.*, 19 L. J., M. C., 209.

See post, in the Appendix, a list of the boroughs to which grants of separate courts of quarter sessions have been made under this Act.

See post, 7 Will. 4 & 1 Vict. c. 19, empowering Recorders to divide their courts when the sessions are likely to last more than three days.

(2) Under the words of this proviso, a Recorder has no

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that no recorder, by virtue of his office, shall have power to make or levy any county rate, or rate in the nature of a county rate, or to grant any license or authority to any person to keep an inn, alehouse, or victualling-house, to sell exciseable liquors by retail, or to exercise any of the powers herein specially vested in the council of such borough. levy county rate, &c.

CVI. And be it enacted, that in the absence of the recorder and deputy recorder the mayor shall be authorised and required, at the proper times ap- Mayor, in the absence of the recorder and deputy recorder,

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power to hear an appeal against the refusal of borough justices to grant an *alehouse license*. The appeal, it has been determined, lies to the county quarter sessions, under 9 Geo. 4, c. 61, s. 27 (the words of which are, that "any person who shall think himself aggrieved by any act of any justice, done in or concerning the execution of this Act, may appeal against such act to the general or quarter sessions of the *county or place* wherein the cause of such complaint shall have arisen"); and this, though the borough has a *ne intromittant* clause, and notwithstanding the words used at the end of the proviso to section 111 of this Act. *Reg.* v. *Deane*, 1 G. & D. 292; 2 Q. B. 96. See also *Reg.* v. *Cockburn*, 4 E. & B. 265.

The Recorder, by this same proviso, is to have no power to *make or levy* any county rate, or rate in the nature of a county rate. By s. 92, ante, he is expressly authorized to *try appeals* against the borough rate in the nature of a county rate. See post, 6 & 7 Will. 4, c. 105, s. 8, by which it is further provided, "that no Recorder, by virtue of his office, shall have power to allow, apportion, make, or levy, or do any act whatsoever with relation to the allowance, apportionment, making, or allowance of any rate whatsoever." Before this enactment, it had been contended that a Recorder might, as a justice of the borough, have acted in the allowance, &c. of poor rates, &c., the proviso of the above section of this Act mentioning only the county rate.

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may open and adjourn the court.

pointed for the holding of such court of quarter sessions of the peace in and for such borough, to open the said court, and to adjourn over the holding of the same, and to respite all recognizances conditioned for appearing at the same, until such further day as such mayor then and there, and so from time to time, shall cause to be proclaimed: Provided nevertheless, that nothing in this Act contained shall authorise or require any such mayor to sit as a judge of the said court for the trial of offenders, or to do any other act in the character of a judge of such court, save only in opening and adjourning the same, and respiting the said recognizances in manner aforesaid.

Capital jurisdictions, and all other criminal jurisdictions in boroughs, other than are specified in this Act abolished.

CVII. And be it enacted, that after the first day of May one thousand eight hundred and thirty-six, all powers and jurisdictions to try treasons, capital felonies, and all other criminal jurisdictions whatsoever granted or confirmed by any law, statute, letters patent, grant, or charter whatsoever, to any mayor, bailiff, alderman, recorder, or other corporate or chartered officer, or corporate or chartered justice of the peace whomsoever, in any borough, and all right of any body corporate in any borough, or any of the members thereof, by virtue of any law, statute, letters patent, grant, or charter whatsoever, to elect or nominate any justices to keep the peace in and for any borough, or by any members of any such corporate body to act as such justices of the peace in or for any of the last-named boroughs other than is herein declared, shall cease: Provided nevertheless, that nothing in this Act contained shall be construed to restrain or prevent the holding of any court of gaol delivery or general or quarter sessions of the

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peace in and for any borough for which such court may now be holden, until the said first day of May, but every such court may be holden in like manner, and with the same powers, until the said first day of May, as if this Act had not been passed.

Chartered Admiralty jurisdictions abolished.

CVIII. And be it enacted, that from and after the passing of this Act so much of all laws, statutes, and usages, and so much of all royal and other charters, grants, and letters patent heretofore granted to any borough or body corporate, whereby such borough, or any place within the precincts or liberties of the same, or such body corporate, or the freemen or inhabitants of the same, claims or claim to be exempted and released from the jurisdiction and office of the Lord High Admiral of England, or of the High Court of the Admiralty of England, or whereby any body corporate, or any mayor, bailiff, recorder, steward, or other chartered or corporate officer of any borough has or claims anything belonging to the office of admiral, whether or not to be exercised by virtue of any commission to them or any of them to be directed, shall be and the same is hereby repealed: Provided nevertheless, that nothing in this Act contained shall extend to alter or affect the jurisdiction and office of the Lord Warden in his office of Admiral of the Cinque Ports(1): Provided also, that all suits and matters wherein before the passing of this Act the rights of any salvors, or any droits or perquisites to the office of

Jurisdiction of the Cinque Ports not to be affected.

(1) See ss. 134 and 135 of this Act, further preserving the jurisdiction of the Cinque Ports. As to offences committed within such jurisdiction, see 1 & 2 Geo. 4, c. 76.

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Admiral belonging, were drawn into question, may be continued, heard, determined, and adjudicated upon in like manner as if this Act had not passed.

Certain exceptions in 38 Geo. 3, c. 85, repealed.

CIX. And whereas an Act was passed in the thirty-eighth year of his late Majesty George the Third, intituled *An Act to regulate the Trial of Causes, Indictments, and other Proceedings which arise within the Counties of certain Cities and Towns Corporate within this Kingdom*, but certain cities and counties of cities were excepted out of the operation of the same: and whereas it is expedient to repeal in part the said exceptions; Be it therefore enacted, that so much of the last recited Act as provides that nothing therein contained shall extend or be construed to extend to the city or county of the city of Bristol, or the city or county of the city of Chester, or to the criminal jurisdiction of the city of Exeter and county of the same city, shall be and the same is hereby repealed; and that the town of Berwick-upon-Tweed shall be taken to be a county of a town corporate, and to be within all the provisions of the last recited Act; and that after the first day of May in the year one thousand eight hundred and thirty-six, and until his Majesty shall be pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any county of a city or town corporate, all bills of indictment for offences committed within such county of a city or town corporate shall be preferred, and all proceedings upon such indictments shall be had as in the last recited Act is authorised to be done (1);

Berwick-upon-Tweed to be a county of a town.

As to trial of offences committed in counties of cities and towns corporate.

(1) Section 1 of the stat. 38 Geo. 3, c. 52, above cited, is as

38 Geo. 3, c. 52

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and the counties of the cities and towns corporate named in the first column of the schedule (C.) to this

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follows:—"'Whereas there at present exists, in the counties of cities and of towns corporate within this kingdom, an exclusive right, that all causes and offences, which arise within their particular limits, should be tried by a jury of persons residing within the limits of the county of such city or town corporate; which ancient privilege, intended for other and good purposes, has in many instances been found by experience not to conduce to the ends of justice: And whereas it will tend to the more effectual administration of justice, in certain cases, if actions, indictments, and other proceedings, the causes of which arise within the counties of cities and towns corporate, were tried in the next adjoining counties:' In order, therefore, to remedy this mischief for the future, *be it enacted*, &c. That, from and after the passing of this Act, in every action, whether the same be transitory or local, which shall be prosecuted or depending in any of his Majesty's Courts of record at Westminster, and in every indictment removed into his Majesty's Court of King's Bench by writ of *certiorari*, and in every information filed by his Majesty's Attorney or Solicitor-General, or by the leave of the Court of King's Bench, and in all cases where any person or persons shall plead to or traverse any of the facts contained in the return to any writ of *mandamus*, if the *venue* in such action, indictment, or information be laid in the county of any city or town corporate within that part of Great Britain called England, or if such writ of *mandamus* be directed to any person or persons, body politic and corporate, that it shall and may be lawful for the court in which such action, indictment, information, or other proceeding shall be depending, at the prayer and instance of any prosecutor or plaintiff, or of any defendant, to direct the issue or issues joined in such action, indictment, information, or proceeding, to be tried by a jury of the county next adjoining to the county of such city or town corporate, and to award proper writs of *venire* and *distringas* accordingly, if the said court shall think it fit and proper so to do."

II. "And be it further enacted by the authority aforesaid,

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Act annexed shall be considered as next adjoining to the county named in conjunction with the same respectively in the second column of the said schedule (C.).

Offenders committed to borough sessions whose jurisdiction is taken away, to be tried in the adjoining county.

CX. And be it enacted, that after the said first day of May one thousand eight hundred and thirty-six, every person who shall then stand committed to take his trial at any court of gaol delivery, general or quarter sessions of the peace for any borough, charged with any offence, which the recorder of such borough after the said first day of May will not have jurisdiction to try, may be lawfully removed and committed to the gaol or house of correction of the

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that it shall and may be lawful for any prosecutor or prosecutors to prefer his, her, or their bill or bills of indictment, for any offence or offences committed, or charged to be committed, within the county of any city or town corporate, to the jury of the county next adjoining to the county of such city or town corporate, sworn and charged to inquire for the King, for the body of such adjoining county, at any sessions of oyer and terminer, or general gaol delivery; and that every such bill of indictment found to be a true bill by such jury, shall be valid and effectual in law, as if the same had been found to be a true bill by any jury sworn and charged to inquire for the King for the body of the county of such city or town corporate."

From the terms of the latter part of this 109th section, it might have been supposed that *criminal* proceedings alone were contemplated; but as the Act of Geo. 3 is *repealed*, so far as relates to the places named, the court may direct an *action*, the *venue* of which is laid in Bristol, to be tried in the adjoining county. *Cole* v. *Gane*, 3 Dowl. & L. 369. The jurisdiction of the assizes under this section is not affected by the grant of a court of quarter sessions to the borough. *Reg.* v. *Holden*, 8 C. & P. 606.

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county in which or adjoining to which such borough is situated, there to remain and take his trial at the next court of quarter sessions for such county, if the offence is cognizable by a court of quarter sessions, and if not, then before the judges of oyer and terminer and gaol delivery at their next circuit; and all persons bound by recognizance to prosecute and give evidence against such offenders, shall be bound to appear to prosecute and give their evidence at the court at which such offenders shall be tried as aforesaid; and all such recognizances and all depositions relating to such charges shall be transmitted to the proper officer of the court where such offenders shall be tried; and the sheriff, under-sheriff, gaolers, and other officers of the county in which such offenders shall be so tried, are hereby authorised and required in every such case to receive every prisoner so committed to their custody, and him safely to keep until delivered by due course of law, and the judges of assize and others named in his Majesty's commissions of oyer and terminer and gaol delivery, or the justices for the county, as the case may be, in which such offenders shall be tried, are hereby authorised and required to hear and determine all such cases, and to order the payment of the usual and fit expenses of the prosecutors and witnesses, and all other costs and expenses, which in like case may be directed to be paid by order of the court(1).

County justices to have jurisdiction in all bo-

CXI. And be it enacted, that after the said first day of May one thousand eight hundred and thirty-

(1) See 7 Geo. 4, c. 64, ss. 23, 24, 25.

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roughs which have not a separate court of quarter sessions of the peace under this Act.

six, the justices assigned, or hereafter to be assigned, to keep the peace in and for the county in which any borough is situated, to which his Majesty shall not have granted that a separate court of quarter sessions of the peace shall be holden in and for the same, shall exercise the jurisdiction of justices of the peace in and for such borough, as fully as by law they and each of them can or ought to do in and for the said county (2); and no part of any borough, in and for which a separate court of quarter sessions of the peace shall be holden, shall be within the jurisdiction of the justices of any county from which such borough before the passing of this Act was exempt, any law, statute, letters patent, charter, grant, or custom to the contrary notwithstanding (3).

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(2) This section must apply to magistrates acting out of quarter sessions. See post, stat. 12 & 13 Vict. c. 18. It will be observed, that this Act had deprived boroughs of courts of quarter sessions held under their charters, but had not destroyed their *ne intromittant* clauses. The object of this section therefore is, to empower county magistrates to act in such boroughs, not having a separate court of quarter sessions under s. 103, notwithstanding the *ne intromittant* clause.

(3) It has been decided, that these words do not exclude the county magistrates from hearing an appeal under 9 Geo. 4, c. 61, s. 27, against the refusal of borough magistrates to grant an alehouse license. *Reg.* v. *Read*, 1 G. & D. 292. See ante, s. 105, note (2), p. 198.

The borough of Bridgewater, before the passing of this Act, had a quarter sessions and *four* justices, but no *non intromittant* clause. The *whole* of the parish of Bridgewater was within the jurisdiction of the borough justices, though *part* only was within the borough; both the parish and borough were within the county of Somerset. Under s. 7 of this Act, part only of the parish was included within the new boundary of the bo-

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CXII. And be it enacted, that within ten days after the grant of a separate court of quarter ses- Certain boroughs not to be assessed

rough. The borough obtained a grant of a separate court of quarter sessions, and seven justices were appointed. One poor-rate was made for the *whole* parish, which was duly allowed by the justices, both of the county and of the borough. An occupier of land in the part *out of the borough* appealed to the county quarter sessions against the rate, on the ground that certain inhabitants of the part within the borough were not rated in respect of stock in trade. The Court of Queen's Bench held, that the county sessions had jurisdiction to try the appeal and to amend the rate; for that the county justices had jurisdiction to try the appeal and to amend the rate; for that the county justices had jurisdiction (under 1 Geo. 4, c. 36, giving appeals to counties from boroughs not having *six* justices), before the passing of this Act; and this section only excludes their jurisdiction where the borough was before exempt from it. *Reg.* v. *Inhabitants of Bridgewater*, 10 A. & E. 711.

Semble, that if the borough of Bridgewater had had *six* justices at the time of the passing of this Act, the 43 Eliz. c. 2, s. 8, would have exempted it from the county jurisdiction in this respect; and then, *semble*, neither the borough nor county sessions could have tried the appeal against such a rate, made for the *whole* parish, neither court having jurisdiction over the *whole*.

In the borough of Marlborough, before this Act, there were justices for the borough under its charter, the county justices being excluded, a gaol, and a rate in the nature of a county rate, and the borough was held not liable to the county rate. Since this Act (the borough being in schedule (B.) and having no grant of a separate commission of the peace or court of quarter sessions), the borough magistrates had acted concurrently with the county justices in some criminal matters, and the town-council had maintained a gaol and repaired a bridge, and made a contract with the county in respect of prisoners. It was held that, under this section, the borough was liable to be assessed to the county rate by the county justices. *Reg.* v. *Justices of Wilts*, 11 Q. B. 758.

It is provided by 7 Will. 4 & 1 Vict. c. 78, s. 50, that where

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to county rates.

sions of the peace to any borough, the council of such borough shall send a copy of such grant, sealed with the seal of the borough, to the clerk of the peace of the county in which such borough or any part thereof is situated; and after the grant of such court to any borough it shall not be lawful for the justices of the peace of any county wherein such borough or part of such borough is situate, to assess any messuages, lands, tenements, or hereditaments within such borough to any county rate thereafter to be made, but every part of every such borough shall thenceforward be wholly free and discharged from contributing, otherwise than is hereinafter provided(1), to any rate or assessment of any kind of and for the county in which any part of such borough is situated: Provided nevertheless, that all arrears of such rates theretofore made may be levied and collected as if this Act had not been passed.

Boroughs to pay the ex-

CXIII. And whereas, by an Act made in the

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boroughs have ceased to hold quarter sessions, all business usually transacted at their late quarter sessions may now be transacted at the quarter sessions of the county in which such boroughs may be situate.

(1) See s. 117, and the note to that section; and 12 & 13 Vict. c. 82, post. Boroughs within this section are not thereby exempted from rates assessed on the *hundred*, under 7 & 8 Geo. 4, c. 31. *Birley* v. *Inhabitants of the Hundred of Salford*, 11 M. & W. 391.

See also 16 & 17 Vict. c. 79, s. 5, post, by which boroughs appointing inspectors of weights and measures are exempted from liability to contribute to county rate in respect of weights and measures in the counties wherein such boroughs are situate.

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seventh year of his late Majesty George the Fourth, intituled *An Act for improving the Administration of Criminal Justice in England and Wales*, it was enacted, that all sums directed to be paid by virtue of that Act in respect of felonies and misdemeanors therein enumerated, committed in liberties, franchises, cities, towns, and places which do not contribute to the payment of any county rate, should be paid as therein is directed: Be it therefore enacted, that all sums directed to be paid by virtue of the last-recited Act in respect of felonies and such misdemeanors as aforesaid, committed or supposed to have been committed in any borough, in which a separate court of quarter sessions of the peace shall be holden, shall be paid out of the borough fund of such borough, anything in the said Act contained notwithstanding; and the order of Court shall in every such case be directed to the treasurer of such borough instead of the treasurer of the county (1).

Expenses of prosecutions at the assizes. 7 Geo. 4, c. 64, s. 25.

CXIV. And be it enacted, that the treasurer of every county in England and Wales shall keep an account of all costs arising out of the prosecution, maintenance, and punishment, conveyance and transport of all offenders committed for trial to the assizes (2) in such county from any borough in which a separate court of quarter sessions of the peace shall be holden; and the treasurer of every such county shall, not more than twice in every year, send a copy of the said account to the council of each of the said boroughs, and shall make an order for payment of the same on the council of such bo-

Treasurers of counties to keep an account of expenses of prosecution of offenders sent by such boroughs for trial at the assizes, and make order on them for payment thereof.

(1) See *Reg.* v. *Treasurer of Oswestry*, 12 Q. B. 239.

(2) The *quarter sessions* are not named here; but the clause is amended by 5 & 6 Vict. c. 98, s. 13, post.

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rough(3); and the council of every such borough shall forthwith order the same, with all reasonable charges of making and sending such account, to be paid to the treasurer of such county out of the borough fund; and in case any difference shall arise concerning the said account, it shall be decided by the arbitration of a barrister to be named as is provided in the case of differences with respect to the payment of monies under contracts made by autho-

In case of difference respecting such account, the same to be referred to arbitration, as provided in 5 Geo. 4, c. 85.

(3) Under this section, the county treasurer may order the council of any borough within the county having a separate court of quarter sessions, to pay to the county the expenses of prisoners committed from such borough for trial at the assizes, and confined in the county gaol, though such prisoners had been committed before trial to the borough gaol, and were not confined in the county gaol until after the bills against them were found. And now, by the County Rates Act, 15 & 16 Vict. c. 81, s. 38, (post, Appendix), two justices of the county may, on the complaint of the county treasurer, one calendar month after the making of the order of the council on the borough treasurer under this section, issue their warrant directly to the latter officer for the payment of a further sum of ten per cent. on the amount named in the order of the council, and may enforce such warrant in the same manner as they may the recovery of county rates, under that Act, against guardians or overseers of the poor.

The expenses so to be charged on the borough are to be estimated upon a calculation of the proportion which the expense of each prisoner bears *to the total expenses* of the gaol, and are not to be limited to the direct expenses incurred in respect of the *individual prisoner*. *Reg.* v. *Johnson*, 10 A. & E. 740.

Under the circumstances above stated, the judge of assize has jurisdiction to refer the matter to the arbitration of a barrister, according to the provisions of 5 Geo. 4, c. 85, ss. 1 & 2. Id. 752. By 7 & 8 Vict. c. 93, post, the barrister is empowered to submit a special case for the opinion of one of the superior Courts upon any matter referred to him, or to raise any question of law on the face of his award.

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rity of an Act made in the fifth year of his late Majesty King George the Fourth, intituled *An Act for amending an Act of the last Session of Parliament, relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales:* Provided that nothing herein contained shall be construed to alter or restrain the powers given by the last-mentioned Act of contracting with the justices of the peace having authority or jurisdiction in and over any gaol or house of correction of the county wherein or where such borough is situated, or whereto it is adjacent, for the conveyance, support, and maintenance in such last-mentioned gaol or house of correction of prisoners committed thereto from such borough, save only that all such powers shall, after the first day of May one thousand eight hundred and thirty-six, be vested in the council of such borough in the name of the body corporate whose council they are, and in none other; and for the purpose of making such contracts as aforesaid, the council of such borough, and none other, shall have power to make the orders required by the said last-mentioned Act to be made by the justices of the borough at the borough sessions(4).

Proviso as to contracts.

Council to make orders.

(4) See stat. 5 & 6 Vict. c. 98, ss. 18—24; and *Reg.* v. *Mayor &c. of Birmingham*, 10 Q. B. 116, post, p. 215. An order of county justices, authorizing a contract with the council of a borough for the maintenance of borough prisoners in the county house of correction, in pursuance of statutes 5 Geo. 4, c. 85, s. 1 and s. 114 of this Act, is an order made under the *former* statute, and is removeable, therefore, by *cer-*

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Council may contract for committing prisoners to the gaol of another borough, if sufficient.

CXV. And be it enacted, that in every case in which it shall have been made to appear to the satisfaction of one of his Majesty's principal secretaries of state that there is in any borough a gaol or house of correction fit for the confinement of prisoners, the council of any borough shall have the same powers of contracting, in the name of the body corporate whose council they are, with any person or body corporate having the government or ordering of such last-mentioned gaol or house of correction, in like manner as is hereinbefore enacted concerning contracts with justices of the peace

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tiorari, being unaffected by s. 132 of this Act, taking away the writ.

The provisions of this section, and of 5 Geo. 4, c. 85, ss. 1 & 2, as to the contracts with county justices for the maintenance, &c., of borough prisoners, apply only to boroughs which have already prisoners to maintain, *and a gaol of their own existing.*

It was held, therefore, by the Court of Queen's Bench, that the borough of Manchester (though chartered by the Crown under stat. 7 Will. 4 & 1 Vict. c. 78, s. 49, and having a grant of quarter sessions) could not contract under the above sections, never having had any gaol of its own. *Reg.* v. *Justices of Lancashire*, 11 A. & E. 144.

According to the above decision, newly chartered boroughs could not derive any benefit from the above statute, 5 Geo. 4, c. 85, unless they had a gaol already existing, as a new gaol could only be erected by the authority of an Act of Parliament. (See 2 Inst. 205; Com. Dig., Imprisonment (A)). But see now 5 & 6 Vict. c. 98, post. See also 12 & 13 Vict. c. 82.

As to the provision of *lunatic asylums* for boroughs, and the union of boroughs and counties for the erection and maintenance thereof, see the stat. 16 & 17 Vict. c. 97.

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having authority or jurisdiction in and over county gaols and houses of correction; and all the provisions of the last-recited Act made in the fifth year of his late Majesty shall extend, or as nearly as may be, to all such contracts for the conveyance to and support and maintenance of offenders in such borough gaol or house of correction; and in case his Majesty shall have granted to the borough in which such gaol or house of correction shall be situated a separate court of quarter sessions of the peace, such offenders may be tried and sentenced by such court for all offences of which the court has cognizance, and punished accordingly; and all the provisions of the last-recited Act made in the fifth year of his late Majesty shall extend as nearly as may be to the trial and punishment of such offenders, and to all Acts necessary for such trial or consequent thereon (1).

Council of certain boroughs to have the same powers under the Acts 4 Geo. 4, c. 64. and 5 Geo. 4, c. 85, as justices of the peace have at their sessions in counties.

CXVI. And whereas, by an Act passed in the fourth year of his late Majesty George the Fourth, intituled *An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales*, it was provided, that certain cities, towns, and places included in a certain schedule (A.) to the said Act annexed, should be taken to be within the provisions of the same: and

(1) By 6 & 7 Will. 4, c. 105, s. 1, the county justices may contract with the council of a borough, in which there is a sufficient gaol, for the committal of county prisoners thereto; and if such borough has a separate court of quarter sessions, such prisoners may also be tried there.

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whereas, by an Act passed in the fifth year of his late Majesty George the Fourth, intituled *An Act for amending an Act of the last Session of Parliament, relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales*, so much of the last-recited Act as related to the cities of Canterbury, Lichfield, and Lincoln was repealed; Be it therefore enacted, that the council of every borough named in the last-mentioned schedule (A.) (except the cities of Canterbury, Lichfield, and Lincoln) shall have within their borough all the powers (except in hearing and determining appeals against convictions) which any justices of the peace assembled at their general or quarter sessions in any county in England have within the limits of their commission by virtue of the said last-recited Acts or either of them, or as near thereto as the nature of the case will admit; and all things in the said last-recited Acts, or either of them, provided to be done at any general or quarter sessions of the peace, shall be done at some quarterly meeting of the council of such borough (1).

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(1) See 7 Will. 4 & 1 Vict. c. 78, s. 38, providing that justices of cities or boroughs shall, for the purposes of regulating the gaols, &c., hold a quarterly session, *at the usual times of holding quarter sessions of the peace*; but no order made by such justices, requiring the payment of money, shall be of any force till confirmed by the council: and see note (2) to that section, post.

By stat. 5 & 6 Vict. c. 53, s. 2, "so much of any Act as enacts that any such agreement" as is thereinbefore mentioned—that is, "any agreement towards altering, enlarg-

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Boroughs to pay a proportion of the other county expenditure.

CXVII. And be it enacted, that the treasurer of every county in England and Wales shall keep an account of all sums of money received in aid or on account of the county rate, and of the sum of money (1) expended out of the county rate for other purposes than the costs arising out of the prosecution, maintenance, and punishment, conveyance and transport of offenders committed for trial in such county, and in the case of boroughs having a separate court of quarter sessions of the peace, other than out of coroners' inquests, and shall, not more than twice in every year, send a copy of the said account to the council of every borough situate within such county in which a separate court of quarter sessions of the peace shall be holden, and which, before the passing of the said Act, intituled *An Act to settle and describe the Divisions of* 2 & 3 Will. 4, c. 64.

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ing, building, repairing, or improving any prison to be used as a *district prison* under the provisions thereinafter contained," (see the statute, post,) "shall be made by the council of any borough at a *quarterly meeting* of the council," is repealed. And by 5 & 6 Vict. c. 98, s. 17, it is further enacted, that any such agreement may be made by the council at a special meeting to be called for that purpose.

(1) Under stat. 5 & 6 Vict. c. 110, s. 4, the gaol of Coventry was purchased by the county of Warwick, out of the county funds. The cost of such purchase was held to be within this section, as incurred for a purpose "other than the prosecution," &c., of offenders committed for trial in the county; and therefore that the borough of Birmingham, though having a grant of a separate court of quarter sessions, was liable, as part of the county of Warwick, to contribute to the cost of such principal money. *Reg.* v. *Mayor &c. of Birmingham*, 10 Q. B. 116. But see now the stat. 12 & 13 Vict. c. 82, s. 1, post.

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Counties and the Limits of Cities and Boroughs in England and Wales, so far as respects the Election of Members to serve in Parliament, was chargeable with (2) or liable to contribute in whole or in part to the county rate of such county, and shall make an order on the council of every such borough for the payment of such proportion of such sum as would have been chargeable, after deducting all sums of money received in aid of the county rate as aforesaid, if this Act had not passed, upon such borough as the same shall be bounded according to the provisions of this Act; and the council of such borough shall forthwith order the same, with all reasonable charges of making and sending the said account, to be paid to the treasurer of such county out of the borough fund: Provided that in case any difference shall arise concerning the last-mentioned account, it shall be decided by the arbitration of

Proviso, in case of difference.

(2) A question has been raised under these words, whether a borough (in *the first section* of schedule (A.) to this Act) which has a separate court of quarter sessions, and which was not, before the passing of the Boundary Act, liable to the county rate, can be called upon for any contribution to the county rate in consequence of a portion of the adjoining county being added to the borough by the Boundary Act, and by s. 7 of this Act; and it has been held that it cannot. *Reg.* v. *Inhabitants of New Sarum*, 7 Q. B. 941. And this seems to be clear upon the express words of the above section. For though the part added may have previously contributed to the county rate, the question is whether the borough, previously to the passing of the Boundary Act, did. There is no provision in this section for a separate rate being made on the part added only, and no new burden can be thrown on the inhabitants living within the old limits. See ante, s. 112, and also note to s. 1 of 6 & 7 Will. 4, c. 103.

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a barrister to be named as is provided in the case of differences with respect to the payment of monies under contracts made by authority of the said Act made in the fifth year of his late Majesty King George the Fourth, intituled *An Act for amending an Act of the last Session of Parliament, relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales* (3). 5 Geo. 4, c. 85.

Borough courts of record to be holden as heretofore, but in certain cases with extended jurisdiction.

CXVIII. And be it enacted, that in every borough in which by charter or custom there is or ought to be holden a court of record (1) for the trial of civil actions not regulated by the provisions of any local act of Parliament, or in which, at the time of the passing of this Act, a barrister of five years standing shall not act as judge or assessor (2), the

(3) A borough newly incorporated under this Act is, in respect of its liabilities under s. 114 and this section, a town "contributing to the public rate for the county," within stat. 1 & 2 Will. 4, c. 41, s. 13; its justices, therefore, may order the county treasurer to pay the recompence, and costs of the staves, &c., of special constables appointed by them under that statute. *Reg.* v. *Hulton*, 13 Q. B. 592.

(1) The mere disuse, for two hundred years, of a court granted to a corporation by charter for the trial of causes, was held to be no answer to a rule for a *mandamus* commanding them to hold it, though it is alleged there are no sufficient funds for the purpose. *Rex* v. *Mayor &c. of Wells*, 4 Dowl. P. C. 562.

(2) This clause is amended and explained by 6 & 7 Will. 4, c. 105, s. 9, by which fresh provisions are made for the holding of such courts.

See also 7 Will. 4 & 1 Vict. c. 78, ss. 32, 33, 34, 35, & 36;

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recorder, or in the absence of the recorder, or in case there shall not be a recorder, such officer of the borough as by the charter constituting such court or by custom shall be the judge of such court, shall continue to be and act as such judge; and the council of such borough in every case, whether such court be regulated by the provisions of a local act of Parliament or otherwise, shall have power for that purpose to appoint the necessary officer, other than the recorder, before whom such court is to be holden(3); and every such judge or assessor, other than the mayor, shall hold his office during his good behaviour; and the judge of every such court shall hold the said court at such times(4) and places, and with such rules of practice, and with the same powers and jurisdiction as belonged to the said court at the time of passing this Act: Provided always, that in every case in which such court had not before the passing

Proviso as to what actions may be tried.

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and 2 & 3 Vict. c. 27, amending the above, and regulating the proceedings in such courts.

See post, in Appendix, the "Rules of the Borough Court of Record at Portsmouth," as settled and allowed under the above-mentioned statutes.

(3) The officer so appointed must look for his salary to the borough fund (see s. 92), and cannot maintain an action against the corporation for arrears of it. *Addison* v. *Mayor &c. of Preston*, 12 C. B. 108.

(4) Every court of record for the trial of civil actions, held in any of the boroughs mentioned in Schedules (A.) and (B.) to this Act, must be held for the trial of issues of fact and of law *four times* at least in the year, and with no greater interval between the holding of any two successive courts than four calendar months. 2 & 3 Vict. c. 27, s. 2, post.

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of this Act authority to try such actions as are hereinafter next mentioned, any such court in which a barrister of five years standing shall act as judge or assessor shall have authority to try actions of assumpsit, covenant, and debt, whether the debt be by specialty or on simple contract, and all actions of trespass or trover for taking goods and chattels, provided the sum or damages sought to be recovered shall not exceed twenty pounds, and all actions of ejectment between landlord and tenant wherein the annual rent of the premises of which possession is sought to be recovered shall not exceed twenty pounds, and upon which no fine shall have been reserved or made payable: Provided also, that every such judge respectively from time to time may make rules for regulating the practice of such court over which he presides, but so that no such rules shall be of force until they shall have been allowed and confirmed by three or more judges of the superior Courts of common law at Westminster: Provided also, that the jurisdiction of every court of record for the trial of civil actions within any borough shall be extended so far as the metes and bounds of every such borough, as the same shall be and be declared under the provisions of this Act (5): Provided also, that no action shall be tried by any such judge, wherein the title to land, whether freehold, copyhold, or leasehold, or other tenure whatsoever, or to any tithe, toll, market, fair, or other franchise shall be in question, in any court which before the passing

See 6 & 7 Will. 4, c. 105, s. 9.

Jurisdiction to be extended.

Proviso.

(5) See 7 Will. 4 & 1 Vict. c. 78, s. 35, post, empowering a further extension.

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of this Act had not authority to try actions in which such titles as last aforesaid were in question; and in case it shall appear in the course of any action in such court as last aforesaid, or shall be made to appear upon oath to such court as last aforesaid, that any such title as last aforesaid is in question in such action, that then the jurisdiction of such court as last aforesaid in the matter of such action shall cease, and it shall be in the discretion of the court to award costs against the party commencing the same.

Council to appoint registrar and other necessary officers of the court.

CXIX. And be it enacted, that the council of every borough in which there shall be holden a court of record for the trial of civil actions as aforesaid shall appoint a registrar of such court, except in boroughs where the town-clerk acts as such registrar, and such other officers and servants as are necessary for carrying on the business and executing the process of such court: Provided that no registrar or other officer of such court shall, by himself or any partner, or by his or their clerks, practise as an attorney in such court, nor shall any such partner or clerk act as agent for any other attorney in such court: Provided also, that, unless disqualified as herein provided, every attorney of his Majesty's superior Courts at Westminster shall have full liberty to practise as an attorney in every such court(1).

Existing suits not to

CXX. And be it enacted, that no suit commenced in any court of record in any borough before the

(1) See *Reg.* v. *Mayor &c. of York*, 3 Q. B. 847; 2 G. & D. 580, in note (1) to s. 66, ante, p. 119. See also *Rex* v. *Sheriff of City of York*, 3 B. & Ad. 770.

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first day of May one thousand eight hundred and thirty-six shall abate by reason of any change that shall have been made in the constitution of such court by the provisions of this Act, but that the same may continue and be heard and determined as if it had been commenced before such judge.

abate by reason of the change of jurisdiction.

CXXI. And be it enacted, that every person, being a burgess of any borough wherein there shall be a separate court of sessions of the peace, or a court of record for the trial of civil actions (unless he shall be exempt or disqualified otherwise than in respect of property from serving on juries by virtue of an Act passed in the sixth year of the reign of King George the Fourth, intituled *An Act for consolidating and amending the Laws relative to Jurors and Juries*), shall be qualified and liable to serve on grand juries in such borough, and also upon juries for the trial of all issues joined in any court of quarter sessions of the peace, and in any court of record for the trial of civil actions triable within the borough of which such person shall be a burgess; and the clerk of the peace of every such borough shall give public notice of the time and place of holding every such quarter sessions of the peace ten days at the least before the holding thereof, and shall, seven days at the least before the holding thereof, cause to be summoned a sufficient number of persons, being qualified and liable as aforesaid, to serve as grand jurors at such sessions; and the clerk of the peace and registrar of the court of record respectively shall also cause to be summoned (1) not

Who to be jurors.

6 Geo. 4, c. 50.

Notice of quarter sessions.

Summoning jurors, &c.

(1) No time is here mentioned for the summoning of the

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less than thirty-six nor more than sixty persons so qualified and liable as aforesaid to serve as jurors at every such sessions, and at the holding of every such court of record for the trial of causes, in case there shall be any cause then to be tried; and such summons shall be made by shewing to the person to be summoned, or in case he shall be absent from the usual place of his abode by leaving with some person therein inhabiting, notice under the hand of such clerk of the peace or registrar respectively containing the substance of such summons; and such clerk of the peace shall make out a list of the names of such persons so summoned as grand jurors, and the clerk of the peace and registrar respectively shall also make out a panel of such persons so summoned other than grand jurors, and such list and panel shall respectively contain therein the Christian names and surnames, places of abode, and descriptions of the several persons therein named; and if any person, having been duly summoned to attend on any jury, shall not attend in pursuance of such summons, or, being thrice called, shall not answer to his name, or after his appearance wilfully withdraw himself from the presence of the court, the court shall impose such fine upon every person so making default (unless some reasonable excuse shall be proved to the satisfaction of the court) as the court shall think meet; and if any person on whom such fine shall be imposed shall refuse to pay the same to the person who shall be authorised by the court

Mode of summoning.

Fine on jurors for non-attendance, &c.

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petty jury. In general, seven days, the time appointed for the summoning of the grand jury, has been adopted; but any reasonable time before the sessions will be sufficient.

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to receive the same, it shall be lawful for the court, then or at its next sitting, by order of the court signed by the clerk of the peace or registrar respectively, to cause to be levied, by distress and sale of the goods of the person on whom such fine shall have been imposed, every such fine, and the reasonable charges of such distress and sale; and every fine so received shall be paid to the treasurer of the borough, to be by him carried to the account of the borough fund hereinbefore mentioned: Provided nevertheless, that no person shall be summoned to serve as a juror at such sessions or court of record oftener than once in one year (2). Proviso.

CXXII. And be it enacted, that after the passing of this Act every member of the council (1) for the time being of every borough, and every justice assigned to keep the peace therein, and the treasurer Members of the council, &c., exempt from serving on juries; burgesses of boroughs which have quarter ses-

(2) See 7 Will. 4 & 1 Vict. c. 78, s. 36, under which persons may be summoned a *second* time in one year, if all the persons liable to serve shall have been summoned once during that year.

As to the jurors to serve on a cause tried under a writ of trial directed to a recorder as judge of a borough court of record, under the 3 & 4 Will. 4, c. 42, s. 17, see *Farmer* v. *Mountfort*, 8 M. & W. 266, and 9 M. & W. 100.

See also, as to the jurors to serve on the trial of issues in the *district courts* which may be holden by recorders of boroughs, under 5 & 6 Vict. c. 53, ss. 37—40 of that Act, post.

(1) So much hereof as exempts or disqualifies members of the council for the time being from serving on the *grand jury* at the borough quarter sessions, is repealed by 16 & 17 Vict. c. 79, s. 6, as to every borough not containing 12,000 inhabitants, according to the last census.

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sions exempt from juries of county quarter sessions.

and town-clerk for the time being of every such borough, shall be exempt and disqualified from serving on any jury summoned within such borough respectively, and exempt from serving on any jury summoned to serve in the county wherein such borough is situate; and all burgesses of every borough in and for which a separate court of quarter sessions of the peace shall be holden shall be exempt from serving on any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace in the county wherein such borough is situate.

All chartered exemptions from serving on juries abolished.

CXXIII. And be it enacted, that after the passing of this Act no person in any borough shall continue to be exempt from serving on juries in any of the King's Courts of record at Westminster, or in the superior courts, civil or criminal, of the counties palatine of Lancaster and Durham, or in any court of assize, nisi prius, oyer and terminer, gaol delivery, or sessions of the peace, or in any other of the King's courts, by virtue of any writ, grant, charter, prescription, or otherwise; and so much of an Act made in the sixth year of the reign of his late Majesty King George the Fourth, intituled *An Act for consolidating and amending the Laws relative to Jurors*, as provides that all persons in any borough exempt from serving upon juries in any of the Courts aforesaid, by virtue of any prescription, charter, grant, or writ, shall continue to have and enjoy such exemption in as ample a manner as before the passing of that Act, and shall not be inserted in the lists thereafter mentioned, shall be and the same is hereby repealed.

6 Geo. 4, c. 50, in part repealed.

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Fees payable to the clerk of the peace, clerk to the magistrates, and registrar and officers of the court of record.

CXXIV. And be it enacted, that the council of every borough shall and they are hereby required, within six calendar months next after their election, to make and settle a table of the fees which shall be taken by the clerk of the peace in those boroughs in which a separate court of quarter session of the peace shall be holden, and in those boroughs to which a commission of the peace shall have been granted, a table of the fees to be taken by the clerk to the justices (1), and in those boroughs in which there shall be a court of record, a table of the fees (2) to be taken by the registrar and officers of such court; and such tables of fees shall be submitted to one of his Majesty's principal secretaries of state; and when such tables of fees shall be confirmed and allowed by such secretary of state, either as such table shall have been submitted to him, or with such alterations, additions, or abatements as he shall think proper, the fees therein mentioned may thenceforth be lawfully taken by the person therein named to be entitled thereunto; and it shall be lawful for the council of such borough, from time to time, as occasion may require, to make new tables of fees to be taken instead of the fees contained in the tables which shall have been made as

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(1) See *Reg.* v. *Mayor &c. of Gloucester*, 5 Q. B. 862; Dav. & M. 677, in note (8) to s. 92, ante, p. 164.

(2) By 2 & 3 Vict. c. 27, s. 1, "the judge" of the court of record is to settle the fees of attornies for business transacted in such court, and to make rules, &c.

See post, in note to 6 & 7 Will. 4, c. 105, s. 8, *Palmer* v. *Powell*, 6 M. & W. 627; also *Stamiland* v. *Hopkins*, 9 M. & W. 178, in note (3) to s. 72, ante, p. 137.

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aforesaid, which new table shall be confirmed and allowed in the manner hereinbefore mentioned, otherwise the same shall be of no validity; and that until tables of the fees so to be taken in any such borough shall have been made and confirmed as aforesaid it shall be lawful for such clerk of the peace at the quarter sessions for any such borough, and such clerk to the justices, to take the fees authorised by the table for the time being to be taken by the clerk of the peace at the quarter sessions and clerk to the justices respectively for the county within or adjoining to which such borough is situated, and for the registrar and officers of such court of record to take the fees usually taken by them before the passing of this Act.

Table of fees to be hung up.

CXXV. And be it enacted, that the town-clerk of every borough shall cause a true copy of the tables of fees in force for the time being to be hung up in a conspicuous part of the room in which the business of his office is transacted, and also in the room wherein the justices of the peace of such borough shall sit for transacting their business, and also in the room wherein the court of quarter sessions of the peace for the borough shall be held, and also in the court of record of the said borough.

Application of penalties.

CXXVI. And be it enacted, that when by any Act any penalties or forfeitures are or shall hereafter be made recoverable in a summary manner before any justice or justices of the peace, and by such Act respectively the same are or shall be limited and made payable to his Majesty, or to any body corporate, or to any person whomsoever, save

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and except the informer, who shall sue for the same, or any party aggrieved, in every such case the same, if recovered and adjudged before any justice of any borough in which a separate court of quarter sessions of the peace shall be holden as aforesaid, shall, notwithstanding anything in such Act respectively contained, be recovered for and adjudged to be paid to the treasurer of such borough for the time being, to the credit and on account of the borough fund of such borough; and no such penalty or forfeiture, or share of such penalty or forfeiture, shall in any case be recovered by or adjudged to be paid to any other person than the said treasurer, unless such person be the informer or the party aggrieved: Provided always, that nothing herein contained shall extend to any penalties or forfeitures recovered under any Act relating to the customs, excise, and post-office, or to trade or navigation (1), or any branch of his Majesty's revenue.

Limitation of time for prosecution of offences punishable on summary conviction.

CXXVII. And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this Act, be it enacted, that the prosecution for every such offence shall be commenced within three calendar months after the commission of the offence, and not otherwise; and that where any person shall be charged on the oath of a credible

(1) The Merchant Seamen's Act, 7 & 8 Vict. c. 112, was held to be an Act relating to trade and navigation within this proviso, and all penalties recovered under it to be payable, by s. 62 of that Act, to the Seamen's Hospital Society. *Seamen's Hospital Society* v. *Mayor &c. of Liverpool*, 4 Exch. 180.

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witness with any such offence before a justice of the peace, the justice may summon the party charged to appear before any two justices of the peace acting in and for the borough in which such offence shall have been committed, at a time and place to be named in such summons; and if such party shall not appear accordingly, the justices of the peace then and there present (upon proof of the due service of the summons by delivering a copy thereof to the party, or by delivering such copy at the party's usual place of abode to some inmate thereat, and explaining the purport thereof to such inmate,) may either proceed to hear and determine the case in the absence of the party, or may issue their warrant for apprehending and bringing such party before them, as they shall think proper.

Power to summon witnesses.

CXXVIII. And be it enacted, that it shall be lawful for any justice of the peace acting in and for any borough to issue his summons requiring any person to appear before any such justices of the peace for the purpose of giving evidence touching any offence against this Act; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by such summons, and no reasonable excuse for his absence shall be proved before the justices of the peace then and there present, or if any person appearing in obedience to such summons shall refuse to be examined on oath touching any such offence by the justices then and there present, every person so offending shall, on conviction thereof before the said justices, or any other justices of the peace, forfeit and pay such sum of money, not exceeding five pounds, as to the con-

Penalty for disobedience of summons, &c.

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victing justices shall seem meet; and no person, although liable to the rate contributing to the borough fund of any borough, shall be deemed an incompetent witness in proof of any offence against this Act by reason of any penalty or forfeiture for such offence being applicable to the use of such borough fund; and no justice of the peace shall be disabled from acting in the execution of this Act by reason of his being liable to the rate contributing to the borough fund of any borough.

No witness or justice to be incompetent on the ground of rateability.

CXXIX. And be it enacted, that the justices of the peace, by whom any person shall be summarily convicted and adjudged to pay any sum of money for any offence against this Act, may adjudge that such person shall pay the same either immediately or within such period as the said justices shall think fit; and in case such sum of money shall not be paid at the time so appointed, the same shall be levied by distress and sale of the goods and chattels of the offender, with the reasonable charges of such distress; and for want of sufficient distress such offender shall be imprisoned, with or without hard labour, in the common gaol or house of correction, as to the convicting justices shall seem meet, for any term not exceeding one calendar month where the sum to be paid shall not exceed five pounds, and for any term not exceeding two calendar months in any other case; the imprisonment to cease in each of the cases aforesaid upon payment of the sum due.

Payment of penalties; may be levied by distress, or offender imprisoned.

CXXX. And be it enacted, that the justices of the peace before whom any person shall be sum-

Form of conviction.

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marily convicted of any offence against this Act may cause the conviction to be drawn up in the following form of words, or in any other words to the like effect, as the case may require; (that is to say,)

"to wit. { Be it remembered, that on the day of in the year of our Lord in the borough of in the county of A. O. is convicted before us, J. P. and J. J. P., two of his Majesty's justices of the peace for the said county [*or* borough, *or otherwise as the case may be*], for that the said A. O. did [*here specify the offence, and the time and place when and where the same was committed, as the case may be*]; and we do adjudge that the said A. O. shall for the said offence forfeit the sum of and shall pay the same immediately, [*or* shall pay the same on or before the day of], to the treasurer for the said borough, to be by him applied according to the directions of the statute in that case made and provided. Given under our hands the day and year first above mentioned."

Appeal against convictions under this Act.

CXXXI. And be it enacted, that any person who shall think himself aggrieved by any summary conviction in pursuance of this Act, may appeal to the next court of general or quarter sessions of the peace to be holden not less than twelve days after such conviction for the county or for the borough wherein the cause of complaint shall have arisen, provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such

Notice of such appeal.

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conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognisance, with a sufficient surety, before a justice of the peace, within such three days, or at any time during his custody, on giving to the complainant three days notice in writing of his intention so to do, and of the name, description, and place of abode of his proposed surety, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given and such recognisance entered into, the justice before whom the same shall be entered into shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal or the affirmance of the conviction shall order and adjudge the offender to be dealt with and punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment,

No certiorari, &c.

CXXXII. And be it enacted, that no conviction, order, warrant(1), or other matter made or purport-

(1) Under the above words it has been decided, that an order of the borough quarter sessions, in the case of an appeal against a borough rate (in the nature of a county rate), cannot be removed by *certiorari*. *Reg.* v. *Justices of Ripon*, 7 A. & E. 417.

With respect, however, to any *order* of the council of any

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ing to be made by virtue of this Act (2) shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of his Majesty's Courts of record at Westminster; and no warrant of commitment shall be held void by reason of any defect therein, provided that it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same; and where any distress shall be made for levying any money by vir-

As to informality in warrants, &c.

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borough *for the payment of any sum of money out of the borough fund*, it has since been provided by 7 Will. 4 & 1 Vict. c. 78, s. 44, that such order may be removed into the Court of Queen's Bench by *certiorari*, and may be disallowed or confirmed upon motion and hearing, with costs, according to the judgment and discretion of the said Court.

(2) An order of county justices, authorising a contract with the council of a borough for the maintenance of borough prisoners, &c., in pursuance of 5 Geo. 4, c. 85, s. 1, and s. 114 of this Act, is an order made under the *former* statute. This section, therefore, does not prevent the removal of such an order by *certiorari*. *Reg.* v. *Justices of Lancashire*, 11 A. & E. 144.

From the above decision it seems very questionable whether an order of the court of quarter sessions, quashing or confirming an order of removal, or a conviction on appeal, can be removed by *certiorari*. The Recorder's authority is derived *solely* under this Act; and though the provisions of certain statutes are as it were incorporated in this Act by reference, it seems that the Recorder makes his order "by virtue of this Act."

It was held, in *Rex* v. *Terret*, 2 T. R. 735, that where proceedings had been taken under two statutes, the former of which took away the *certiorari*, and the latter not, the portion of the proceedings which had been taken under the former Act could not be removed, but that under the latter could.

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tue of this Act the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage, if any, in an action upon the case.

Venue in proceedings against persons acting under this Act.

CXXXIII. And for the protection of persons(9) acting in the execution of this Act, be it enacted, that all actions(1) and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried(2) in the county

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(9) Under the word "*persons*" it is apprehended that a corporation would be included, and would consequently be entitled to the protection afforded by this section.

In *Boyd* v. *Croydon Railway Company*, 4 Bing. N. C. 669, the word "*person*," in a similar clause as to actions, was held to include the company, which was incorporated. See also in *Cortis* v. *Kent Waterworks Company*, 7 B. & C. 314, a similar decision.

(1) This section applies to actions of *replevin*, although one of its provisions, as to notice of action, is not applicable in such cases. *Jones* v. *Johnson*, 6 Exch. 133.

(2) In *Reg.* v. *Mitchell*, 2 Q. B. 636; 2 G. & D. 274, the verdict of guilty was set aside on the ground of a *mis-trial*,—the offence on the face of the indictment appearing to have been committed in the county of Northampton, and the trial having taken place in the county of Lincoln.

The facts of the above case were shortly these:—The two defendants, constables appointed under the Municipal Act,

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where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise(3); and notice in writing of such action(4), and of the cause thereof,

Notice of action.

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were indicted for an assault, committed, as alleged by them, in pursuance of their office as such constables. The indictment, which was preferred at the quarter sessions for the borough of Stamford, situated *partly in the county of Lincoln and partly in the county of Northampton*, was in the following form:—"Borough of Stamford, (to wit)—The jurors &c. present, that F. M. &c., late of the parish of St. Martin, in the borough of Stamford, and in the county of Northampton, at the parish aforesaid, in the county aforesaid," &c. The indictment was removed by *certiorari*, issued at the instance of the defendants, and was afterwards tried at the assizes for the county of Lincoln. It appeared that the assault, though commenced in the parish of St. Martin, in the county of Northampton, was continued into the part of the parish situate in the county of Lincoln; and it was contended, that on such a motion the Court would presume the offence to have been committed in that part of the parish which was in the county of Lincoln. But it was held that such argument was of no avail, as the Act requires, *not only that it should be "tried"* in the particular county, but that the offence should be *also "laid" there*.

In schedule (A.) to this Act, and in the Boundary Act, the borough of Stamford is mentioned as being in the county of Lincoln. But this does not prove that the *whole* borough is in Lincolnshire, nor does it transfer any part of it from Nottinghamshire to Lincolnshire.

(3) All prosecutions must be *commenced* within six calendar months after the fact committed. It will be sufficient, under these words, if the information and proceedings before the magistrates be taken within that time; see *Willice's case*, 1 East, P. C. 186; recognised by Lord *Ellenborough* in *Rex* v. *Stokes*, 2 M. & Sel. 72.

(4) It was held, in *King* v. *Burrell*, 12 A. & E. 460, that

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shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon (5); and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client (6), and have the like

General issue.

Tender of amends, &c.

Costs.

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in an action against an overseer for not signing a burgess list, (see s. 15, ante, p. 30), a notice of action under this section was not necessary, notice being required only in actions against persons for *anything done in pursuance of the Act.* There the offence was an omission or neglect to do something required by the Act. See s. 48, and notes, ante, p. 77.

By 5 & 6 Vict. c. 97, s. 4, one calendar month is now the period of notice in all actions where notice is required by law (unless otherwise specially directed by statute).

(5) On an issue joined upon a plea of *non cepit* in replevin, the defendant was held entitled, under this section, to shew that he was a borough constable appointed under s. 76, and took the goods within the county in which the borough is situate, but without the borough, on a charge that they had been stolen. *Meller* v. *Leather*, 1 E. & B. 619.

(6) Notwithstanding this clause giving full costs as between attorney and client, a constable appointed under s. 76 of this statute, being sued for an act done in the general exercise of

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remedy for the same as any defendant hath by law in other cases.

Jurisdiction of the Cinque Ports preserved.

CXXXIV. And be it enacted, that the courts of quarter sessions of the peace(1) of the towns and ports of Hastings, Sandwich, Dovor, and Hythe, and of the ancient town of Rye, or of such of the said towns and ports and ancient town to which his Majesty shall grant a separate court of quarter sessions of the peace, shall have jurisdiction over offences and matters committed, arising, and happening as well within the boundaries of such towns and ports and ancient town respectively as within the ancient members and liberties not being corporate of the same respectively, and also within the towns named in the schedule to this Act which are ancient corporate members and liberties of the said towns and ports and ancient town respectively, and to which his Majesty shall not grant a separate court of quarter sessions of the peace; and also any or either of the said towns and ports of Hastings, Sandwich, Dovor, and Hythe, and ancient town of Rye, to which his Majesty shall not grant a separate court of quarter sessions of the peace, and their or its members and liberties, shall for all purposes relating to the jurisdiction of courts of quarter sessions of

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his duty as such, and the plaintiff discontinuing, was held, before 5 & 6 Vict. c. 97, entitled to double costs under the 21 Jac. 1, c. 12, s. 5. *Maberley* v. *Titterton*, 7 M. & W. 540. But see now s. 2 of the above Act.

(1) See post, 6 & 7 Will. 4, c. 105, s. 10, repealing this section as to the courts of quarter sessions for the Cinque Ports, and making fresh provision, and the note to the same.

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the peace be respectively within the jurisdiction of the courts of quarter sessions of the peace of the nearest other of the said towns and ports or ancient town, to which his Majesty shall grant a separate court of quarter sessions of the peace; and the recorders, clerks of the peace, and coroners of the said towns and ports and ancient town respectively, or of such of them to which his Majesty shall grant a separate court of quarter sessions of the peace respectively, shall and may have and exercise the same jurisdiction, powers, and authorities within all places within or subject to the jurisdiction of such courts respectively, as within the said ancient towns and ports and ancient town respectively of which they are or may be appointed recorders, clerks of the peace, or coroners.

Jurisdiction of the Cinque Ports further preserved.

CXXXV. And be it enacted, that the justices of the peace of the towns and ports of Hastings, Sandwich, Dovor, and Hythe, and of the ancient town of Rye, or of such of the said towns and ports and ancient town as shall have justices of the peace assigned to them by virtue of this Act, shall and may have and exercise the same jurisdiction, powers, and authorities over offences and matters committed, arising, and happening within the ancient members and liberties not being corporate of such towns and ports and ancient town respectively, as such justices shall and may have and exercise within the towns and ports and ancient town for which they are or may be respectively justices of the peace; and also his Majesty's justices of the peace, acting under the authority of a commission or commissions, issued by virtue of an Act passed in the fifty-first year of the

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reign of his late Majesty King George the Third, intituled *An Act to facilitate the Execution of Justice within the Cinque Ports*, shall and may have and exercise all the jurisdiction, powers, and authorities given to such justices by such Act of Parliament, as well within the members and liberties not being corporate of the said towns and ports and ancient town respectively as within the said towns named in the schedules to this Act being corporate members and liberties thereof, or any of them, or any of the said towns and ports and ancient town which shall not have justices of the peace assigned to them by virtue of this Act: Provided always, that nothing herein contained shall affect the liability of all inhabitant householders within any of the members and liberties of the Cinque Ports and ancient towns thereof, not being corporate, to serve on juries at quarter sessions as heretofore.

51 Geo. 3, c. 86.

Proviso as to juries in the Cinque Ports' liberties.

Act not to affect letters patent founding a grammar school at Louth.

CXXXVI. Provided always, and be it enacted, that nothing contained in this Act shall alter or affect certain letters patent bearing date in the fifth year of the reign of his Majesty King Edward the Sixth, founding a free grammar school at Louth, in the county of Lincoln, and creating a body corporate for the management and regulation thereof, and for the benefit of twelve poor persons mentioned in the said letters patent, by the name of the "Warden and Six Assistants of the town of Louth and Free School of King Edward the Sixth in Louth;" but that the said warden and assistants shall continue and be a body corporate with perpetual succession under the provisions of the said letters patent, for the management and regulation of the said school

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and the purposes aforesaid only, and shall remain and be seised of and entitled to all lands, tolls, tenements, and hereditaments now vested in them for the purposes therein mentioned, in the same manner, to all intents and purposes, as if this Act had not been passed.

Saving of the rights of the Universities of Oxford and Cambridge.

CXXXVII. And be it enacted, that nothing in this Act contained shall be construed to alter or affect the rights or privileges, duties or liabilities, of the chancellor, masters, and scholars of the Universities of Oxford or Cambridge respectively, as by law possessed under the respective charters of the said Universities or otherwise, or to entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge, by reason of his occupation of any rooms, chambers, or premises in any of the colleges or halls of the Universities of Oxford or Cambridge, or either of them, or to compel any resident member of either of the said Universities to accept any office in or under the body corporate of the mayor and citizens of the city of Oxford, or of the mayor and burgesses of the borough of Cambridge, or to authorise the levy of any rate within the precincts of the said Universities, or of any of the colleges or halls of the same, which now by law cannot be levied therein (1.)

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(1) Under 5 & 6 Will. 4, c. 105, s. 12, the Crown may appoint the Vice-chancellor of the university of Cambridge to be a justice of the peace in and for the town and borough of Cambridge. The same section, however, contains a proviso, that the Vice-chancellor, by reason of his being in the commission of the peace for the borough, shall have no greater

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Not to affect jurisdiction over precincts of cathedrals, nor rights of university of Durham.

CXXXVIII. And be it enacted, that all the jurisdictions and authorities now exercised in and over the precinct or close of any cathedral shall be continued, as if this Act had not been passed, concurrently with the jurisdiction and authority of the justices of the peace of the borough within which such close is situated; and that nothing herein contained shall affect or interfere with the rights and privileges granted by charter or Act of Parliament to the University of Durham.

In cases where bodies corporate are seised in their corporate capacity of advowsons, &c., the same may be sold as ecclesiastical commissioners may direct.

CXXXIX. And be it enacted, that in every case in which any body corporate, or any particular class, number, or description of members, or the governing body of any body corporate, now is or are in their corporate capacity, and not as charitable trustees, according to the meaning and provisions of this Act, seised or possessed of any manors, lands, tenements, or hereditaments whereunto any advowson or right of nomination or presentation to any benefice or ecclesiastical preferment is appendant or appurtenant, or of any advowson in gross, or hath or have any right or title to nominate or present to any benefice or ecclesiastical preferment (1), every

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powers as to licensing alehouses than any other justice named in the same commission.

(1) The object and intention of the legislature were, by this section, to take from the municipal corporations all ecclesiastical patronage whatever, and to transfer the same to purchasers. Doubts, however, were entertained, whether the right to present to certain curacies and readerships in the gift of and paid by certain municipal corporations, but which, for want of any regular endowment or augmentation,

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such advowson and every such right of nomination and presentation shall be sold at such time and in such manner as the commissioners (2) appointed by his Majesty to consider the state of the Established Church in England and Wales with reference to ecclesiastical duties and revenues may direct, so that the best price may be obtained for the same; and it shall be lawful for the council of such body corporate, and they are hereby authorised and required, with the consent of the said commissioners or any three or more of them, in writing under their hands, to convey and assure under the common seal of such body corporate such advowson or such right of nomination or presentation as aforesaid to the purchaser or purchasers thereof respectively, his or their heirs, executors, administrators, and assigns, or to such uses as he or they shall direct; and the proceeds of every such sale shall be paid to the treasurer of

Proceeds to be paid to treasurer.

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had not become *perpetual cures, or benefices presentative*, could be sold under this section; and, in consequence, the statute 1 & 2 Vict. c. 31, was passed, enacting that every such right of nomination vested in any municipal corporation might be sold; and after such sale, every such curacy, &c. should become a "benefice presentative," within the meaning of 36 Geo. 3, c. 83; and every such curate, &c., and his successors, should become and be a "body corporate" within 1 Geo. 1, c. 10, s. 54.

See post, 1 & 2 Vict. c. 31, and the case of *Hine* v. *Reynolds*, 2 Man. & G. 71, and 2 Scott's New Rep. 394, there cited.

(2) By 6 & 7 Will. 4, c. 77, s. 26, it is enacted that the provisions of this section relating to these commissioners shall apply to the commissioners appointed under that Act, by the style and title of "The Ecclesiastical Commissioners for England."

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the borough, whose receipt shall be a sufficient and effectual discharge to the purchaser or purchasers to whom the same shall be given for the amount of his or their purchase-money, and shall be by him invested in government securities for the use of the body corporate, and the annual interest payable thereon shall be carried to the account of the borough fund(3): Provided always, that, in any case of vacancy arising before any such sale shall have taken place and been completed, such vacancy shall be supplied by the presentation or nomination of the bishop or ordinary of the diocese in which such benefice or ecclesiastical preferment is situated.

See s. 92. Vacancy arising before sale, to be supplied by bishop of the diocese.

Periods connected with first registration and election may be deferred by order in council.

CXL. And whereas it may happen that the several provisions of this Act cannot be carried into effect within the several periods in the present year hereinbefore specified and limited in that behalf; Be it therefore enacted, that it shall be lawful for his Majesty, if he shall think fit, by the advice of his privy council, to order any days and times before the first day of February next for doing the several matters required or authorised by this Act to be done in lieu of the several days and times for the present year hereinbefore specified, or any of them(1);

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(3) See post, 6 & 7 Will. 4, c. 104, s. 3, enabling the treasurer to apply the proceeds of the sale of any advowson, &c., in discharge of any corporate debt contracted before the passing of this Act.

(1) An order in council was accordingly issued on the 11th of September, 1835, deferring the whole process of the revision for two months. For instance, the overseers were directed to make out and deliver their lists to the town-clerk

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and in such case all matters mentioned in such order shall be done on and within such days and times as shall be mentioned respectively in that behalf in such order, as if the days and times mentioned in such order had in every instance been mentioned in this Act instead of the days and times hereinbefore respectively mentioned in that behalf, and not otherwise: Provided always, that nothing herein contained shall authorise his Majesty to appoint any days or times other than are hereinbefore specified for any matters required or authorised by this Act to be done after the expiration of this present year: Provided also, that no person shall be entitled to be enrolled in the burgess roll of any borough in this present year, unless he would have been entitled on the last day of August in this year to have his name included in some overseer's list, if such list had been made out on the fifth day of September in this year.

The King empowered to grant charters of incorporation.

CXLI. And whereas sundry towns and boroughs of England and Wales are not towns corporate, and it is expedient that several of them should be incor-

on the 7th of November, instead of on the 5th of September, as is provided by section 15, supra; and the other succeeding steps were postponed in the same proportion. The first election of councillors was directed to take place on the 26th day of December, instead of on the 1st of November, as appointed by section 30; the aldermen were to be elected on the 31st day of December, instead of on the 9th of November; and the 1st day of January, 1836, was appointed as the first quarterly meeting of the council, instead of the 9th day of November, 1835. The mayor and the sheriff, also, were to be respectively elected and appointed on the said 1st of January.

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porated; Be it enacted, that if the inhabitant householders of any town or borough in England *and* (1) Wales shall petition his Majesty to grant to them a charter of incorporation, it shall be lawful for his Majesty (2), by any such charter, if he shall think fit, by

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(1) This error, and the meaning attached to the word "borough" by the interpretation clause, s. 142, post, p. 245, caused the passing of 7 Will. 4 & 1 Vict. c. 78, s. 49, by which the powers given by the Municipal Act may be granted by the Crown to any town or borough in England or Wales, though not corporate, or not named in any of the Schedules to this Act. This same section renders it unnecessary that the publication in the London Gazette should be by "royal proclamation."

(2) The Crown has always possessed the privilege of creating corporations and conferring franchises; see 1 Kyd on Corporations, 61; but where privileges and powers are to be conferred, which are not recognised by the common or statute law, an Act of Parliament is necessary.

This section, though it does not at all abridge the common law prerogative of the Crown, prevents its granting charters of incorporation *with the powers conferred by this Act*, save with the advice of the privy council, and on petition by "the inhabitant householders."

It would seem, as there are no words in this section expressly requiring that such petition should be signed by a *majority* of the whole number of inhabitant householders, that according to the ordinary rule (applicable to such cases), such a petition, signed by a majority of the persons *present at a regularly convened meeting of the inhabitants for the purpose*, would be sufficient to give authority to the Crown to act. Accordingly, it was held, in *Reg.* v. *Bourchier*, 2 G. & D. 737, 3 Q. B. 641, that the petition need not be signed by an actual majority of the inhabitant householders of the borough. See *Rutter* v. *Chapman*, 8 M. & W. 1, in the note to 7 Will. 4 & 1 Vict. c. 78, s. 49, post.

The Court will not grant a *quo warranto* information

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advice of his privy council, to grant the same, to extend to the inhabitants of any such town or borough within the district to be set forth in such charter the powers and provisions in this Act contained: Provided nevertheless, that notice of every such petition, and of the time when it shall please his Majesty to order that the same be taken into consideration by his privy council, shall be published by royal proclamation in the *London Gazette* one month at least before such petition shall be so considered. Proviso for notice.

CXLII. And be it enacted, that in the construction of this Act the word "*Borough*"(1) shall be Interpretation clause.

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against an officer of a corporation (established by charter, pursuant to 7 Will. 4 & 1 Vict. c. 78, s. 49), if it appear that the object in prosecuting such information is to try the legality of the charter. *Reg.* v. *Taylor*, 11 A. & E. 949. Nor will they permit its legality to be indirectly questioned on a motion to quash a rate made by the justices of the county upon the borough, after the grant of the charter, expressly on the ground that the charter was invalid. *Reg.* v. *Bourchier*, 2 G. & D. 737; 3 Q. B. 141, ante, note (1), to s. 103, p. 192.

(1) On this word Mr. Serjeant Manning has the following note, in *Bruce* v. *Wait*, 1 Man. & G. 1: "Every city is a borough, Co. Litt. 109; but the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, having used the word '*borough*' only, when making provision for the government of the places mentioned in the schedules to that Act, some of which are cities, it has been *usual* since the passing of that Act to add the word 'borough,' and to transform the citizens into '*burgesses*.' Thus, the city of Bath is now styled the city and borough of Bath, and the corporate body is called the mayor, aldermen, and *burgesses* of Bath. The interpretation clause, section 142, enacts, that, in the construction of the

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construed to mean city, borough, port, cinque port, or town corporate, named in one of the said schedules (A.) and (B.); and the words "*Body Corporate*" shall be construed to mean body corporate named in one of the said schedules (A.) and (B.); and the word "*Burgess*" shall be construed to mean citizen in the case of a city; and the word "*County*" shall be construed to mean county, riding, parts, liberty, or division; and the word "*Trustees*" shall be construed to mean trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, by whatever name they are designated; and the word "*Parish*" shall be construed to mean parish, township, vill, hamlet, chapelry, tithing, district, precinct, or place maintaining its own poor; and the words "*Overseers of the poor*" shall be construed to mean all persons who execute the duties of overseers of the poor; and that, in all things hereinbefore provided to be done, until the first election of councillors in any borough under this Act shall have been declared, the word "*Mayor*" shall be construed to mean the chief officer of a borough, by whatever name he is now called; and in

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Act, the word 'borough' shall be construed to mean city, cinque port, or town corporate, named in the schedules; and the word 'burgess' shall be construed to mean citizen, in the case of a city. One of the objects of this clause would appear to be to prevent its being supposed that, by using the terms 'borough and burgesses,' it was intended that such incongruous designations as 'borough and city,' and 'burgesses of the city' should be adopted." See the cases of *Attorney-General* v. *Corporation of Worcester*, and *Corporation of Rochester* v. *Lee*, note (6) to s. 6, ante, p. 12.

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describing any person or thing, any word importing the singular number shall be construed to mean also several persons or things respectively, unless there be something in the subject or context repugnant to such construction; and that no misnomer or inaccurate description of any person, body corporate, or place named in any schedule to this Act annexed, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to such person, body corporate, or place, provided that the description of such person, body corporate, or place be such as to be commonly understood (2).

Misnomer not to vitiate.

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(2) This section cures only an inaccurate description of the *real* person, place of abode, &c., not a statement of a person, place of abode, &c., other than the real one. Therefore, where the voting papers described the place of abode of a candidate for the office of councillor to be "G. P. in the said borough;" whereas his place of abode was N. R. in the said borough, a different place from G. P., this was held not to be cured by s. 142. *Reg.* v. *Coward*, 16 Q. B. 819.

A voting paper was signed "W. J., of K. street." The qualification of W. J. on the burgess roll was "House in M. street." It was shewn that K. street and M. street intersected; that the house in question was the corner house; that it consisted of what had formerly been two distinct houses, one in each street, and had a street-door in each street. It was held that this description was "such as to be commonly understood," within this section. *Reg.* v. *Gregory*, 1 E. & B. 600.

Joseph C., a person entitled to vote at municipal elections, was by mistake entered on the burgess roll as James C.; and he voted by the name of James C. On motion for *quo warranto*, the vote was objected to, in the rule, on the ground that C. was not entitled to vote, and had fraudulently per-

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Act may be altered this session.

CXLIII. And be it enacted, that this Act may be altered or amended by any Act to be passed in this present session of Parliament.

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sonated a person entitled to vote. The Court held clearly that neither of these objections was sustained; and they intimated also, that if the objection in the rule had been that C. had voted in a wrong name, and was not rightly entered on the burgess roll, this objection also could not have been sustained, but the misnomer would have been cured by this section. *Reg.* v. *Thwaites*, 1 E. & B. 704.

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SCHEDULES TO WHICH THIS ACT REFERS.

SCHEDULE (A.).

ENGLAND AND WALES.

BOROUGHS which are to have a COMMISSION of the PEACE.

SECTION 1*.—PARLIAMENTARY BOUNDARIES to be taken until altered by Parliament.

Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
ABERYSTWITH .	0	4	12	Mayor and Burgesses of the town, borough, and liberty of Aberystwith.
ABINGDON . .	0	4	12	Mayor, Bailiffs, and Burgesses of the borough of Abingdon.
BARNSTAPLE . .	2	6	18	Mayor, Aldermen, and Burgesses of the borough and parish of Barnstaple, in the county of Devon.
BATH . . .	7	14	42	Mayor, Aldermen, and Citizens of the city of Bath.
BEDFORD . .	2	6	18	Mayor, Bailiffs, and Burgesses of the town of Bedford.
BERWICK-UPON-TWEED† . .	3	6	18	Mayor, Bailiffs, and Burgesses of the borough of Berwick-upon-Tweed.
BRIDGEWATER .	2	6	18	Mayor, Aldermen, and Burgesses of the borough of Bridgewater.
BRIDPORT . .	2	6	18	Bailiffs and Burgesses of the borough of Bridport.
BRISTOL‡ . .	10	16	48	Mayor, Burgesses, and Commonalty of the city of Bristol.

* See in the Appendix, in 2 & 3 Will. 4, c. 64, Sched. (O.), the boundaries of the boroughs mentioned in this section.

† See post, 6 & 7 Will. 4, c. 103, s. 6.

‡ See ante, ss. 7, 8.

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Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
BURY ST. EDMUNDS	3	6	18	Aldermen and Burgesses of Bury St. Edmunds, in the county of Suffolk.
CAMBRIDGE . .	5	10	30	Mayor, Bailiffs, and Burgesses of the borough of Cambridge.
CANTERBURY . .	3	6	18	Mayor and Commonalty of the City of Canterbury.
CARDIFF . .	2	6	18	Bailiffs, Aldermen, and Burgesses of the town of Cardiff.
CARLISLE . .	5	10	30	Mayor, Aldermen, Bailiffs, and Citizens of the city of Carlisle.
CARMARTHEN . .	3	6	18	Mayor, Burgesses, and Commonalty of the borough of Carmarthen.
CARNARVON . .	2	6	18	Mayor, Bailiffs, and Burgesses of the town and borough of Caernarvon.
CHESTER . .	5	10	30	Mayor and Citizens of the city of Chester.
CHICHESTER . .	2	6	18	Mayor, Aldermen, and Citizens of the city of Chichester.
COLCHESTER . .	3	6	18	Mayor and Commonalty of the borough of Colchester.
DARTMOUTH . .	0	4	12	Mayor, Bailiffs, and Burgesses of the borough of Clifton Dartmouth Hardness, in the county of Devon.
DENBIGH . .	0	4	12	Aldermen, Bailiffs, and Burgesses of the borough of Denbigh.
DERBY . . .	6	12	36	Mayor, Aldermen, and Burgesses of the borough of Derby.
DEVIZES . .	2	6	18	Mayor and Burgesses of the borough of Devizes.
DORCHESTER . .	0	4	12	Mayor, Bailiffs, Aldermen, and Burgesses of the borough of Dorchester, in the county of Dorset.
DOVOR . . .	3	6	18	Mayor, Jurats, and Commonalty of the town and port of Dovor.
DURHAM . .	3	6	18	Mayor, Aldermen, and Commonalty of the city of Durham and Framwelgate.
EVESHAM . .	0	4	12	Mayor, Aldermen, and Burgesses of the borough of Evesham.
GATESHEAD* . .	3	6	18	Boroughholders and Freemen of the borough of Gateshead.

* See *Rex* v. *Greene*, 6 A. & E. 548. The fact that Gateshead is mentioned as above in this schedule, is not *conclusive* of the place having been a borough with a municipal corporation *before* this statute was passed. See also *Rex* v. *White*, 5 A. & E. 613.

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Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
GLOUCESTER	3	6	18	Mayor and Burgesses of the city of Gloucester, in the county of the city of Gloucester.
GUILDFORD	0	4	12	Mayor and Burgesses of the town of Guldeford, in the county of Surrey.
HARWICH	0	4	12	Mayor and Burgesses of the borough of Harwich.
HAVERFORDWEST	0	4	12	Mayor, Sheriffs, Bailiffs, and Burgesses of the county of the town of Haverfordwest, or of the town and county of the town of Haverfordwest.
HEREFORD	3	6	18	Mayor, Aldermen, and Citizens of the city of Hereford.
HERTFORD	0	4	12	Mayor, Aldermen, and Commonalty of the borough of Hertford.
IPSWICH	5	10	30	Bailiffs, Burgesses, and Commonalty of the town or borough of Ipswich.
KENDAL	3	6	18	Mayor, Aldermen, and Burgesses of the borough of Kirby-in-Kendal, in the county of Westmorland.
KIDDERMINSTER	3	6	18	High Bailiff and Commonalty of the borough of Kidderminster, in the county of Worcester.
KINGSTON-UPON-HULL	7	14	42	Mayor and Burgesses of the town or borough of Kingston-upon-Hull.
KING'S LYNN	3	6	18	Mayor and Burgesses of the borough of Lynn Regis.
LEEDS	12	16	48	Mayor, Aldermen, and Burgesses of the borough of Leeds, in the county of York.
LEICESTER	7	14	42	Mayor, Bailiff, and Burgesses of the borough of Leicester.
LEOMINSTER	0	4	12	Bailiffs and Burgesses of the borough of Leominster.
LICHFIELD	2	6	18	Bailiff and Citizens of the city of Lichfield.
LIVERPOOL*	16	16	48	Mayor, Bailiffs, and Burgesses of the borough of Liverpool.
MACCLESFIELD	6	12	36	Mayor, Aldermen, and Burgesses of the borough of Macclesfield.
MONMOUTH	0	4	12	Mayor, Bailiffs, and Commonalty of the town and borough of Monmouth.
NEATH	0	4	12	Portreeve, Aldermen, and Burgesses of the borough of Neath.

* See 6 & 7 Will. 4, c. 92, as to the borough court of Liverpool; and *Laughton* v. *Taylor*, 6 M. & W. 695.

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Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
NEWARK . .	3	6	18	Mayor and Aldermen of the borough of Newark, in the county of Nottingham.
NEWCASTLE-UNDER-LYNE.	2	6	18	Mayor, Bailiffs, and Burgesses of Newcastle-under-Lyne, in the county of Stafford.
NEWCASTLE-UPON-TYNE.	7	14	42	Mayor and Burgesses of the town of Newcastle-upon-Tyne, in the county of the town of Newcastle-upon-Tyne.
NEWPORT, MONMOUTH.	2	6	18	Mayor, Aldermen, and Burgesses of the borough of Newport.
NEWPORT, ISLE OF WIGHT.	2	6	18	Mayor, Aldermen, and Chief Burgesses of the borough of Newport, in the Isle of Wight, in the county of Southampton.
NORTHAMPTON .	3	6	18	Mayor, Bailiffs, and Burgesses of Northampton.
NORWICH . .	8	16	48	Mayor, Sheriffs, Citizens, and Commonalty of the city of Norwich.
NOTTINGHAM . .	7	14	42	Mayor and Burgesses of the town of Nottingham.
OXFORD . . .	5	10	30	Mayor, Bailiffs, and Commonalty of the city of Oxford, in the county of Oxford.
PEMBROKE . .	2	6	18	Mayor, Bailiffs, and Burgesses of the town and borough of Pembroke.
POOLE . . .	2	6	18	Mayor, Bailiffs, Burgesses, and Commonalty of the town of Poole.
PORTSMOUTH . .	7	14	42	Mayor, Aldermen, and Burgesses of the borough of Portsmouth, in the county of Southampton.
PRESTON . .	6	12	36	Mayor, Bailiffs, and Burgesses of the borough of Preston, in the county palatine of Lancaster.
READING . .	3	6	18	Mayor, Aldermen, and Burgesses of the borough of Reading, in the county of Berks.
RIPON . . .	0	4	12	Mayor, Burgesses, and Commonalty of the borough of Ripon, in the county of York.
ROCHESTER . .	3	6	18	Mayor and Citizens of the city of Rochester, in the county of Kent.
ST. ALBANS . .	0	4	12	Mayor and Aldermen and Burgesses of the borough of St. Albans, in the county of Hertford.
SARUM, NEW . .	3	6	18	Mayor and Commonalty of the city of New Sarum, in the county of Wilts.
SCARBOROUGH .	2	6	18	Bailiffs and Burgesses of the town of Scarborough.

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Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Shrewsbury	5	10	30	Mayor, Aldermen, and Burgesses of the town of Shrewsbury, in the county of Salop.
Southampton	5	10	30	Mayor, Bailiffs, and Burgesses of the town of Southampton.
Stafford	2	6	18	Mayor, Aldermen, and Burgesses of the borough of Stafford.
Stamford	2	6	18	Mayor, Aldermen, and Capital Burgesses of the town or borough of Stamford, in the county of Lincoln.
Stockport*	7	14	42	Mayor, Aldermen, and Burgesses of the borough of Stockport.
Sudbury	0	4	12	Mayor, Aldermen, and Burgesses of the borough of Sudbury.
Sunderland†	7	14	42	Mayor, Aldermen, and Commonalty of the borough of Sunderland.
Swansea	3	6	18	Portreeve, Aldermen, and Burgesses of the borough of Swansea.
Tiverton	3	6	18	Mayor and Burgesses of the town and parish of Tiverton, in the county of Devon.
Truro	2	6	18	Mayor, Aldermen, and Capital Burgesses of the borough of Truro.
Warwick	2	6	18	Mayor, Aldermen, and Burgesses of the borough of Warwick.
Wells	0	4	12	Mayor, Masters, and Burgesses of the city or borough of Wells, in the county of Somerset.
Weymouth and Melcombe Regis	2	6	18	Mayor, Aldermen, Bailiffs, Burgesses, and Commonalty of the borough and town of Weymouth and Melcome Regis, in the county of Dorset.
Wigan	5	10	30	Mayor, Aldermen, and Burgesses of the borough of Wigan.
Winchester	3	6	18	Mayor, Bailiffs, and Commonalty of the city of Winchester.
Windsor	2	6	18	Mayor, Bailiffs, and Burgesses of the borough of New Windsor, in the county of Berks.
Worcester	6	12	36	Mayor, Aldermen, and Citizens of the city of Worcester.

* See *Fernley* v. *Worthington*, 1 Man. & G. 491.

† See 6 & 7 Will. 4, c. 103, s. 2, as to the boundaries thereof; also *Rex* v. *White*, 5 A. & E. 613.

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Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
YARMOUTH, GREAT.	6	12	36	Mayor, Aldermen, Burgesses, and Commonalty of the borough of Great Yarmouth, in the county of Norfolk.

SECTION 2.—MUNICIPAL BOUNDARIES to be taken until altered by Parliament.

ANDEVOR . .	0	4	12	Bailiff, approved Men, and Burgesses of the borough of Andevor.
BANBURY . .	0	4	12	Mayor, Aldermen, and Burgesses of the borough of Banbury, in the county of Oxford.
BEVERLEY . .	2	6	18	Mayor, Aldermen, and Burgesses of the borough of Beverley, in the county of York.
BEWDLEY . .	0	4	12	Bailiffs, Burgesses, and Inhabitants of the town and borough of Bewdley.
BIDEFORD . .	0	4	12	Mayor, Aldermen, and Capital Burgesses of the borough, town, and manor of Bideford, in the county of Devon.
BOSTON . . .	3	6	18	Mayor, Aldermen, and Burgesses of the borough of Boston.
BRECON . . .	0	4	12	Bailiff, Aldermen, and Burgesses of the borough of Brecon.
BRIDGNORTH . .	0	4	12	Bailiffs, Aldermen, and Burgesses of the borough of Bridgnorth.
CLITHEROE . .	0	4	12	Bailiffs and Burgesses of the borough of Clitheroe, in the county of Lancaster.
CHESTERFIELD .	0	4	12	Mayor, Aldermen, and Burgesses of the borough of Chesterfield.
CONGLETON . .	3	6	18	Mayor, Aldermen, and Burgesses of the borough of Congleton, in the county of Chester.
COVENTRY . .	6	12	36	Mayor, Bailiffs, and Commonalty of the city of Coventry.
DEAL . . .	2	6	18	Mayor, Jurats, and Commonalty of the town of Deal, in the county of Kent.
DONCASTER . .	3	6	18	Mayor, Aldermen, and Burgesses of the borough of Doncaster, in the county of York.
EXETER . . .	6	12	36	Mayor, Bailiffs, and Commonalty of the city of Exeter.
FALMOUTH . .	0	4	12	Mayor, Aldermen, and Burgesses of the town of Falmouth, in the county of Cornwall.

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Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
GRANTHAM	0	4	12	Aldermen and Burgesses of the town or borough of Grantham.
GRAVESEND	2	6	18	Mayor, Jurats, and Inhabitants of the villages and parishes of Gravesend and Melton, in the county of Kent.
GRIMSBY	0	4	12	Mayor and Burgesses of the town of Grimsby, in the county of Lincoln.
HASTINGS	3	6	18	Mayors, Jurats, and Commonalty of the town and port of Hastings, in the county of Sussex.
KINGSTON-UPON-THAMES	3	6	18	Bailiffs and Freemen of the borough of Kingston-upon-Thames.
LANCASTER	3	6	18	Mayor, Bailiffs, and Commonalty of the town of Lancaster, in the county palatine of Lancaster.
LINCOLN	3	6	18	Mayor, Sheriffs, Citizens, and Commonalty of the city of Lincoln.
LISKEARD	0	4	12	Mayor and Burgesses of the borough of Liskerret, otherwise Liskeard, in the county of Cornwall.
LOUTH	2	6	18	Warden and Six Assistants of the town of Louth and Free School of King Edward the Sixth in Louth.
LUDLOW	0	4	12	Bailiffs, Burgesses, and Commonalty of the town and borough of Ludlow.
MAIDSTONE	3	6	18	Mayor, Jurats, and Commonalty of the King's Town and parish of Maidstone, in the county of Kent.
MALDON	0	4	12	Mayor, Aldermen, and Capital Burgesses and Commonalty of Maldon.
NEWBURY	0	4	12	Mayor, Aldermen, and Burgesses of the borough of Newbury.
OSWESTRY	2	6	18	Mayor, Aldermen, Common Councilmen, and Burgesses of Oswestry.
PENZANCE	2	6	18	Mayor, Aldermen, and Commonalty of the town of Penzance, in the county of Cornwall.
PLYMOUTH	6	12	36	Mayor and Commonalty of the borough of Plymouth.
PONTEFRACT	0	4	12	Mayor, Aldermen, and Burgesses of the borough or town of Pontefract.
RICHMOND	0	4	12	Mayor and Aldermen of the borough of Richmond, in the county of York.

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Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
Romsey . . .	0	4	12	Mayor, Aldermen, and Burgesses of the town of Romsey Infra, in the county of Southampton.
St. Ives . .	0	4	12	Mayor and Burgesses of the borough of St. Ives.
Saffron Walden .	0	4	12	Mayor and Aldermen of the town of Saffron Walden, in the county of Essex.
Stockton . .	2	6	18	Mayor, Aldermen, Burgesses, and Commonalty of the borough of Stockton.
Tewkesbury . .	0	4	12	Bailiffs, Burgesses, and Commonalty of the borough of Tewkesbury, in the county of Gloucester.
Walsall . .	3	6	18	Mayor and Commonalty of the borough and foreign of Walsall, in the county of Stafford.
Welchpool . .	0	4	12	Bailiffs and Burgesses of the borough of Poole, in the county of Montgomery.
Wenlock . .	3	6	18	Burgesses of the borough of Wenlock.
Wisbech . .	2	6	18	Burgesses of the borough of Wisbech.
York . . .	6	12	36	Mayor and Commonalty of the city of York.

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SCHEDULE (B.).

ENGLAND AND WALES.

BOROUGHS which are not to have a COMMISSION of the PEACE unless on Petition and Grant.

Section 1*.—PARLIAMENTARY BOUNDARIES to be taken until altered by Parliament.

Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
ARUNDEL . .	0	4	12	Mayor and Burgesses of the borough of Arundel.
BEAUMARIS . .	0	4	12	Mayor, Bailiff, and Burgesses of the borough of Beaumaris.
CARDIGAN . .	0	4	12	Mayor, Common Council, and Burgesses of the town and borough of Cardigan.
LLANIDLOES . .	0	4	12	Mayor and Burgesses of the borough of Llanidloes.
PWLLHELI . .	0	4	12	Mayor, Bailiffs, and Burgesses of the borough of Pwllheli.
RUTHIN . . .	0	4	12	Aldermen and Burgesses of the borough of Ruthin.
TENBY . . .	0	4	12	Mayor, Bailiffs, and Burgesses of the borough of Tenby.
THETFORD . .	0	4	12	Mayor and Burgesses of the borough of Thetford.
TOTNES . . .	0	4	12	Mayor and Burgesses of the borough of Totnes, in the county of Devon.

SECTION 2.—MUNICIPAL BOUNDARIES to be taken until altered by Parliament.

BASINGSTOKE .	0	4	12	Mayor, Aldermen, and Burgesses of the town of Basingstoke, in the county of Southampton.
BECCLES . .	0	4	12	Portreeve, Surveyors, and Commonalty of the Fen of Beccles, in the county of Suffolk.
BLANDFORD FORUM	0	4	12	Bailiff and Burgesses of the borough of Blandford Forum, in the county of Dorset.

* See, in Appendix, 2 & 3 Will. 4, c. 64, Schedule (O.).

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Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
BODMIN . . .	0	4	12	Mayor and Burgesses of the borough of Bodmin, in the county of Cornwall.
BUCKINGHAM . .	0	4	12	Bailiff and Burgesses of the borough and parish of Buckingham, in the county of Buckingham.
CALNE . . .	0	4	12	Guild, Stewards, and Burgesses in the borough of Calne.
CHARD . . .	0	4	12	Portreeve and Burgesses of the borough of Chard, in the county of Somerset.
CHIPPENHAM . .	0	4	12	Bailiffs and Burgesses of the borough of Chippenham, in the county of Wilts.
CHIPPING NORTON .	0	4	12	Bailiffs and Burgesses of the borough of Chipping Norton, in the county of Oxford.
DAVENTRY . .	0	4	12	Bailiffs, Burgesses, and Commonalty of the borough of Daventry, in the county of Northampton.
DROITWICH . .	0	4	12	Bailiffs and Burgesses of the borough of Wych, otherwise Droitwich, in the county of Worcester.
EYE . . .	0	4	12	Bailiff, Burgesses, and Commonalty of the town and burgh of Eye.
FAVERSHAM . .	0	4	12	Mayor, Jurats, and Commonalty of the town of Faversham.
FOLKESTONE . .	0	4	12	Mayor, Jurats, and Commonalty of the town of Folkestone.
FLINT . . .	0	4	12	Mayor, Bailiffs, and Burgesses of the borough of Flint.
GLASTONBURY .	0	4	12	Mayor and Burgesses of the town of Glastonbury, in the county of Somerset.
GODALMING . .	0	4	12	Warden and Inhabitants of the town of Godalming.
GODMANCHESTER .	0	4	12	Bailiffs, Assistants, and Commonalty of the borough of Cirencester, alias Godmanchester.
HELSTON . .	0	4	12	Mayor and Commonalty of the borough of Helston.
HUNTINGDON . .	0	4	12	Mayor, Aldermen, and Burgesses of the borough of Huntingdon.
HYTHE . . .	0	4	12	Mayor, Jurats, and Commonalty of the town and port of Hythe, in the county of Kent.
LAUNCESTON . .	0	4	12	Mayor and Commonalty of the borough of Dunneheved, otherwise Launceston.

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Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
LLANDOVERY . .	0	4	12	Bailiff and Burgesses of the borough of Llanymtheverye.
LYME REGIS . .	0	4	12	Mayor and Burgesses of the borough of Lyme, in the county of Dorset.
LYMINGTON . .	0	4	12	Mayor and Burgesses of the borough of Lymington.
MAIDENHEAD . .	0	4	12	Mayor, Bridgemasters, and Burgesses of the town of Maydenheth.
MARLBOROUGH .	0	4	12	Mayor and Burgesses of the borough and town of Marlborough, in the county of Wilts.
MORPETH . .	0	4	12	Bailiffs and Burgesses of the borough of Morpeth, in the county of Northumberland.
PENRYN . . .	0	4	12	Mayor and Burgesses of Penryn, in the county of Cornwall.
RETFORD, EAST .	0	4	12	Bailiffs and Burgesses of East Retford, in the county of Nottingham.
RYE . . .	0	4	12	Mayor, Jurats, and Commonalty of the ancient town of Rye.
SANDWICH . .	0	4	12	Mayor, Jurats, and Commonalty of the town and port of Sandwich, in the county of Kent.
SHAFTESBURY .	0	4	12	Mayor and Burgesses of the borough of Shafton, otherwise Shaftesbury, in the county of Dorset.
SOUTH WOLD .	0	4	12	Bailiffs, Aldermen, and Burgesses of the borough of South Wold.
SOUTH MOLTON .	0	4	12	Mayor and Burgesses of the borough and parish of South Molton, in the county of Devon.
STRATFORD-ON-AVON.	0	4	12	Mayor, Aldermen, and Burgesses of the borough of Stratford-upon-Avon.
TAMWORTH . .	0	4	12	Bailiffs and Commonalty of the borough of Tamworth.
TENTERDEN . .	0	4	12	Mayor, Jurats, and Commons of the town and hundred of Tenterden, in the county of Kent.
TORRINGTON . .	0	4	12	Mayor, Aldermen, and Burgesses of the borough and town of Great Torrington, in the county of Devon.
WALLINGFORD .	0	4	12	Mayor, Burgesses, and Commonalty of the borough of Wallingford.
WYCOMBE, CHEPPING.	0	4	12	Mayor, Bailiffs, and Burgesses of the borough of Chepping Wycombe, (otherwise Wicombe,) in the county of Buckingham.

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SCHEDULE (C).

Berwick-upon-Tweed.	Northumberland.
Bristol*.	Gloucestershire.
Chester.	Cheshire.
Exeter.	Devonshire.
Kingston-upon-Hull.	Yorkshire.
Newcastle-upon-Tyne.	Northumberland.

SCHEDULE (D).

No. 1.

THE LIST OF BURGESSES of the Borough of , in the Parish [*or* Township] of .

Christian Name and Surname of each Person at full Length.	Nature of the Property rated.	Street, Lane, or other Place in this Parish [*or* Township] where the Property is situated for which he is now rated.
Ashton, John . . .	Shop . .	No. 23, Church-street.
Bates, Thomas . .	House . .	. . Brook's Farm.

(Signed) *A. B.* } Overseers of the said pa-
C. D. } rish [*or* township].

See ante, s. 15.

No. 2.

NOTICE OF CLAIM.

To the Town Clerk of the Borough of

I HEREBY give you notice, that I claim to have my name inserted in the Burgess List of the Borough of , that I occupy [*here describe the house, warehouse, counting-house, or shop then occupied by the claimant*] in the borough, and that I have been rated in the parish† of [*here state the parish or several parishes, and the time during which the claimant has been rated in each of them within the borough, necessary for his qualification.*]

Dated the day of , in the year .

(Signed) JOHN ALLEN‡, of [*Place of Abode.*]

See ante, s. 17.

* See *Reg.* v. *Holden*, 8 C. & P. 606; ante, p. 204.

† See *Reg.* v. *Mayor &c. of Kidderminster*, 2 L. M. & P. 201; 20 L. J., Q. B., 281; ante, p. 34.

‡ See *Reg.* v. *Mayor &c. of Hartlepool*, 2 L. M. & P. 666; 21 L. J., Q. B., 71; *Reg.* v. *Avery*, Id. 428; ante, p. 34.

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No. 3.

NOTICE OF OBJECTION.

To the Town Clerk of the Borough of [*or To the Person objected to, as the case may be.*]

I HEREBY give you notice, that I object to the name of Thomas Bates, of Brook's Farm, in the parish of [*describe the person objected to as described in the Burgess List*] being retained on the Burgess List of the borough of .

Dated the day of in the year .

(Signed) JOHN ASHTON, of [*here state the Place of Abode* and Property for which he is said to be rated in the Burgess List.*]

No. 4.

LIST OF CLAIMANTS.

The following Persons claim to have their names inserted on the Burgess List of the Borough of .

Christian Name and Surname of each Claimant.	Nature of the Property for which he is now rated.	Situation of the Property for which he is now rated.	Parish [*or* Parishes] in which he has been rated, as stated in the Claim.
Allen, John . .	House .	No. 17, High-street.	Rated in the last year in Saint Mary's parish, in the borough, and in the two preceding years in Saint James's parish, in the borough.

(Signed) *A. B.*, Town Clerk.

No. 5.

LIST OF PERSONS OBJECTED TO.

The following Persons have been objected to as not being entitled to have their Names retained on the Burgess List of the Borough of .

Christian Name and Surname of each Person objected to.	Nature of the Property for which he is now rated.	Situation of the Property for which he is said to be now rated in the Overseer's List.	Parish in which is the Property for which he is now said to be rated in the Overseer's List.
Bates, Thomas .	House .	Brook's Farm .	Saint James'.

(Signed) *A. B.*, Town Clerk.

See s. 17, ante.

* See *Reg.* v. *Deighton*, 5 Q. B. 896, in note to 7 Will. 4 & 1 Vict. c. 78, s. 14, post.

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SCHEDULE (E.).

ABINGDON . .	An Act for better paving, lighting, watching, and otherwise improving the town of Abingdon, in the county of Berks, for removing nuisances, annoyances, and encroachments therein, and for preventing the same in future. [6 Geo. 4, c. 189.]
ARUNDEL . .	An Act for the better paving, cleansing, and lighting the streets, lanes, ways, and passages within the borough of Arundel, in the county of Sussex, and for removing and preventing encroachments, obstructions, and annoyances therein. [25 Geo. 3, c. 90.]
BANBURY . .	An Act for paving, cleansing, lighting, washing, and otherwise improving the several streets, lanes, public passages, and places in the borough of Banbury, in the county of Oxford. [5 Geo. 4, c. 130.]
BARNSTAPLE . .	An Act for paving, improving, and regulating the streets and public places in the borough and parish of Barnstaple, and for better regulation of the present markets, and providing others therein. [51 Geo. 3, c. 154.]
BASINGSTOKE . .	An Act for paving the footways and crosspaths, and lighting, watching, cleansing, widening, and otherwise improving the streets, lanes, and other public passages and places in the town of Basingstoke, in the county of Southampton. [55 Geo. 3, c. 7.]
BATH . . .	An Act for paving, cleansing, lighting, watching, and regulating the streets, squares, lanes, ways, passages, and public places within such part of the parish of Walcot, in the county of Somerset, as is not within the circuit, precinct, and jurisdiction of the city of Bath, in the same county; and for removing and preventing nuisances, annoyances, encroachments, and obstructions, and for establishing a proper and effective police therein; and for licensing and regulating hackney coaches, chairs, porters, basket men, and basket women within the said city of Bath, and a certain distance thereof. [33 Geo. 3, c. 89.]

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BATH—*continued.*	An Act for paving, steaning, cleansing, watering, lighting, watching, and regulating the streets, squares, lanes, ways, passages, and public places within the parish of Bathwick, in the county of Somerset, and for removing and preventing nuisances, annoyances, encroachments, and obstructions, and for establishing a proper and effective police therein. [41 Geo. 3, c. 126.]
	An Act for better paving, cleansing, lighting, watching, regulating, and improving the city of Bath, and the liberties and precincts thereof. [54 Geo. 3, c. 105.]
	An Act to amend an Act of his late Majesty, for paving, cleansing, lighting, watching, and regulating the streets and public places within such part of the parish of Walcot, in the county of Somerset, as is not within the city of Bath. [6 Geo. 4, c. 74.]
BECCLES . . .	An Act for paving, lighting, cleansing, and otherwise improving the streets and other public passages and places within the town of Beccles, in the county of Suffolk. [36 Geo. 3, c. 51.]
BEDFORD . .	An Act for the improvement of the town of Bedford, in the county of Bedford, and for rebuilding the bridge over the river Ouse in the said town. [43 Geo. 3, c. 128.]
	An Act for amending and enlarging the powers of an Act of his present Majesty, intituled "An Act for the Improvement of the Town of Bedford, in the county of Bedford, and for rebuilding the Bridge over the River Ouse in the said Town." [50 Geo. 3, c. 82.]
BERWICK-UPON-TWEED.	An Act for lighting the streets and lanes of the borough of Berwick-upon-Tweed, and the quays and wharfs belonging to the said borough, and that part of the bridge over the river Tweed which lies within the liberties of the said borough, and also the street of Castlegate within the said borough or the liberties thereof; and for paving the footpaths of the streets of the said borough and of Castlegate aforesaid, and for preventing obstructions, nuisances, and annoyances therein. [40 Geo. 3, c. 25.]
BEVERLEY . .	An Act for lighting, watching, and regulating the

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BEVERLEY—*contd.*	streets and lanes and other public passages and places in the town of Beverley, in the county of York. [48 Geo. 3, c. 87.]
	An Act to amend and enlarge the powers of an Act passed in the forty-eighth year of the reign of his late Majesty King George the Third, for lighting, watching, and regulating the streets, lanes, and other public passages and places within the town of Beverley, in the county of York. [6 Geo. 4, c. 138.]
BOSTON . . .	An Act for lighting and watching the streets, lanes, and other public passages and places within the borough of Boston, in the county of Lincoln, and for removing and preventing nuisances, annoyances, and obstructions therein. [16 Geo. 3, c. 25.]
	An Act for the better paving, cleansing, and otherwise improving the borough of Boston, in the county of Lincoln. [32 Geo. 3, c. 80.]
	An Act for amending and rendering more effectual an Act passed in the thirty-second year of his present Majesty, for better paving, cleansing, and otherwise improving the borough of Boston, in the county of Lincoln. [46 Geo. 3, c. 40.]
	An Act for amending and rendering more effectual an Act passed in the sixteenth year of his present Majesty, for lighting and watching the streets, lanes, and other public passages and places within the borough of Boston, in the county of Lincoln, and for removing and preventing nuisances therein. [46 Geo. 3, c. 41.]
BRECKNOCK . .	An Act for supplying the borough and town of Brecknock, and liberties thereof, with water: and for paving, cleansing, regulating, and lighting the streets, lanes, and public passages there; and for widening and making commodious some of the said streets, lanes, and passages. [16 Geo. 3, c. 56.]
BRIDGEWATER . .	An Act to enlarge the market-house and regulating the markets within the borough of Bridgewater, in the county of Somerset, for paving, cleansing, lighting, and watching the

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BRIDGEWATER—*contd.*	streets, lanes, and other public passages and places within the said borough or adjacent thereto; and for the improvement thereof. [7 Geo. 4, c. 7.]
BRIDPORT . .	An Act for taking down the market-house in the borough of Bridport, in the county of Dorset, and rebuilding the same, together with a session or court-house, in a more convenient situation; for removing the shambles or butchers' row: for paving, cleansing, lighting, and watching the said borough; for removing and preventing nuisances and annoyances; and for prohibiting the covering of any new houses or buildings within the borough with thatch. [25 Geo. 3.]
BRISTOL . . .	An Act for the better preserving the navigation of the rivers Avon and Frome, and for cleansing, paving, and lighting the streets of the city of Bristol. [11 Will. 3, c. 23.]
	An Act for making more effectual an Act passed in the eleventh and twelfth years of the reign of King William the Third, for the better preserving the navigation of the rivers Avon and Frome, and for cleansing, paving, and enlightening the streets of the city of Bristol, so far as the same Act relates to the paving and enlightening of the said streets; and for the regulating hackney coachmen, halliers, draymen, and carters, and the markets and sellers of hay and straw, within the said city and liberties thereof. [22 Geo. 2.]
	An Act for establishing, maintaining, and well-governing a nightly watch within the city of Bristol. [28 Geo. 2, c. 32.]
	An Act to explain and render more effectual an Act made in the last session of Parliament, intituled "An Act for establishing, maintaining, and well-governing a nightly watch within the city of Bristol." [29 Geo. 2, c. 47.]
	An Act for widening several streets, lanes, ways, and passages within the city of Bristol, and for opening several new streets and passages within the same; and for explaining, amending, and enlarging the powers of the several Acts passed for paving, cleansing, lighting, watching, and

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BRISTOL—*continued.*	regulating the streets and other places within the said city and liberties thereof. [6 Geo. 3, c. 34.]
	An Act for removing and preventing encroachments, obstructions, annoyances, and other nuisances within the city of Bristol and the liberties thereof; and for licensing and better regulating hackney coaches, chairs, waggons, carts, and other carriages, and the owners, drivers, and carriers thereof respectively, and porters and other persons, within and for certain distances round the said city and liberties; and for better regulating the shipping and trade, and the rivers, wharfs, backs, and quays, and the markets, within the same city and liberties; and for other purposes. [23 Geo. 3, c. 65.]
	An Act for amending, altering, and enlarging the powers of several Acts passed for paving, pitching, cleansing, and lighting the streets and other places within the city of Bristol and liberties thereof. [46 Geo. 3, c. 26.]
	An Act for the employment, maintenance, and regulation of the poor of the city of Bristol, and for altering the mode of assessing the rates for the relief of the poor, and certain rates authorised to be raised and levied within the said city by certain Acts for improving the harbour there, and for paving, pitching, cleansing, and lighting the same city; and for the relief of the churchwardens and overseers from the collecting of such rates; and for amending the Act for paving, pitching, cleansing, and lighting the said city. [3 Geo. 4, c. 24.]
	An Act for repairing, lighting, and watching the district of the united parishes of Saint James and Saint Paul, in the county of Gloucester, and for the care of the poor thereof. [2 Geo. 4, c. 89.]
	An Act for lighting and watching the parish of Clifton, in the county of Gloucester. [5 Geo. 4, c. 79.]
BURY ST. EDMUNDS.	An Act for better paving, lighting, cleansing, watching, and otherwise improving the town

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BURY ST. EDMUNDS—*continued.*	of Bury Saint Edmunds, in the county of Suffolk. [51 Geo. 3, c 9.]
	An Act to amend, extend, and render more effectual an Act of his late Majesty, for paving, lighting, cleansing, watching, and otherwise improving the town of Bury Saint Edmunds, in the county of Suffolk. [1 Geo. 4.]
CAMBRIDGE . .	An Act for better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstructions and annoyances, and for widening the streets, lanes, and other passages within the said town. [28 Geo. 3, c. 64.]
	An Act to amend and enlarge the powers of an Act passed in the twenty-eighth year of the reign of his present Majesty, intituled "An Act for the better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstructions and annoyances, and for widening the streets, lanes, and other passages within the said town." [34 Geo. 3, c. 104.]
CANTERBURY . .	An Act for paving, cleansing, lighting, and watching the streets, lanes, and other public passages and places within the walls of the city of Canterbury and the liberties thereof, and also several streets and other places near or adjoining to the said city; and for removing and preventing encroachments, obstructions, nuisances, and annoyances therein. [27 Geo. 3, c. 31.]
CARDIFF . . .	An Act for better paving, cleansing, and lighting the streets, lanes, and public passages in the town of Cardiff and liberties thereof, in the county of Glamorgan, and for removing and preventing nuisances and annoyances therein. [Geo. 3, c. 7.]
CARLISLE . . .	An Act for lighting the streets, lanes, and other public passages and places within the city of Carlisle, in the county of Cumberland, and the suburbs of the said city; for paving the footpaths of the streets of the said city and suburbs; and for otherwise improving the said city. [44 Geo. 3, c. 58.]
	An Act for watching, regulating, and improving the city of Carlisle and the suburbs thereof. [7 & 8 Geo. 4, c. 86.]

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CHESTER . . .	An Act for better regulating the poor, maintaining a nightly watch, lighting, paving, and cleansing the streets, rows, and passages, providing fire-engines and firemen, and regulating the hackney coachmen, chairmen, carmen, and porters, within the city of Chester. [2 Geo. 3.]
	An Act to amend, alter, and enlarge the powers of an Act passed in the second year of the reign of his present Majesty, so far as the same relates to maintaining a nightly watch, and lighting and cleansing the streets, rows, and passages, within the city of Chester, and for preventing nuisances and annoyances in the streets, rows, and passages within the said city, and for regulating and improving the police thereof. [43 Geo. 3, c. 47.]
CHICHESTER . .	An Act for repealing an Act made in the eighteenth year of the reign of Queen Elizabeth, intituled, "An Act for paving of the city of Chichester;" and for the better paving, repairing, and cleansing the streets, lanes, and public ways and passages within the walls of the said city, and for removing and preventing encroachments, obstructions, and annoyances therein. [31 Geo. 3, c. 63.]
	An Act for better lighting and for watching the city of Chichester and places adjacent. [1 & 2 Geo. 4, c. 68].
CHEPPING-WYCOMBE.	An Act for paving, widening, cleansing, watching, lighting, and regulating the streets and other public places within the borough of Chepping-Wycombe, in the county of Bucks, and for removing and preventing nuisances and obstructions therein. [53 Geo. 3, c. 164.]
CHIPPENHAM . .	An Act for lighting, watching, cleansing, paving, and otherwise improving the town of Chippenham in the county of Wilts. [4 Will. 4, c. 47.]
COVENTRY . .	An Act for the better paving, cleansing, lighting and watching the city of Coventry, and the suburbs thereof, and removing and preventing nuisances and annoyances therein; and for regulating the public wells and pumps within the said city and suburbs. [30 Geo. 3, c. 77.]

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DARTMOUTH . .	An Act for building a market-house in the borough of Clifton Dartmouth Hardness, in the county of Devon, and for better paving, lighting, widening, and improving the streets and other public places within the said borough. [55 Geo. 3, c. 28.]
DAVENTRY . .	An Act for paving, cleansing, lighting, and watching the town of Daventry in the county of Northampton, and for regulating the market there, and for enabling the bailiff, burgesses, and commonalty of the borough of Daventry to purchase the moot-hall and to rebuild the same. [46 Geo. 3, c. 118.]
DEAL . . .	An Act for more effectually paving, cleansing, lighting, and watching the highways, streets, and lanes within the town and borough of Deal in the county of Kent, and for removing and preventing encroachments, nuisances, and annoyances therein. [52 Geo. 3, c. 73.]
DERBY . . .	An Act for paving, cleansing, lighting, and otherwise improving the streets, lanes, and other public passages and places within the borough of Derby, and for selling a certain piece of waste ground situate within the said borough, called Nun's Green, towards defraying the expense of the said improvements. [32 Geo. 3, c. 78.]
	An Act for better paving and otherwise improving the borough of Derby. [6 Geo. 4, c. 132.]
DEVIZES . . .	An Act for amending, regulating, cleansing, lighting, watching, and keeping in repair the streets, lanes, and passages within the borough of the Devizes in the county of Wilts, and for preventing nuisances, annoyances, and obstructions therein. [21 Geo. 3, c. 36.]
	An Act for paving, lighting, cleansing, watching, and improving the borough of Devises in the county of Wilts, and for removing and preventing nuisances and annoyances therein. [6 Geo. 4, c. 162.]
DONCASTER . .	An Act for repealing so much of an Act passed in the fourth year of the reign of his present Majesty as relates to the lighting the streets and places within the borough and soke of Doncaster in the county of York; and for more effec-

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DONCASTER—*contd.*	tually lighting, watching, and otherwise improving the said borough, and for preventing nuisances therein. [43 Geo. 3, c. 147.]
DORCHESTER . .	An Act for better cleansing, lighting, and watching the streets, lanes, and other public passages within the borough of Dorchester, in the county of Dorset, and in the tithing of Colliton row in the town of Dorchester aforesaid; for paving the footways and repairing certain horseways of such parts thereof as are turnpike, and for paving the footways and repairing the horseways of such parts thereof as are not turnpike; for removing nuisances, annoyances, and obstructions therein; and for preventing houses or buildings hereafter to be erected in the said borough and tithing from being thatched. [16 Geo. 3, c. 27.]
	An Act for better paving, cleansing, lighting, watching, watering, and otherwise improving the streets and other public passages and places within the borough of Dorchester in the county of Dorset, and the tithing of Colliton-row in the town of Dorchester aforesaid. [4 Will. 4, 22 May.]
DOVER . . .	An Act for better paving, cleansing, lighting, and watching the streets and lanes in the town of Dover in the county of Kent, and in the several parishes of St. Mary the Virgin and Saint James the Apostle in the said town and county: and for removing and preventing nuisances and annoyances therein. [18 Geo. 3, c. 76.]
	An Act to amend an Act made in the eighteenth year of his present Majesty, for paving, cleansing, lighting, and watching the town of Dover, and for removing and preventing nuisances and annoyances therein. [50 Geo. 3, c. 26.]
	An Act to amend two Acts of his late Majesty, for paving, cleansing, lighting, and watching the town of Dover, and for removing and preventing nuisances and annoyances therein. [11 Geo. 4, c. 117.]
DURHAM . . .	An Act for paving, cleansing, lighting, watching, and regulating the streets, lanes, ways, and public passages and places within the city of Durham and borough of Framwelgate, and the

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DURHAM—*continued.*	suburbs thereof, and the streets thereto adjoining; for removing and preventing nuisances, annoyances, encroachments, and obstructions therein; for widening and rendering more commodious several of the said streets, lanes, ways, and public passages and places, and for regulating and improving the markets within the said city and suburbs. [30 Geo. 3, c. 67.]
EVESHAM . .	An Act for paving, cleansing, lighting, watching, regulating, and improving the borough of Evesham in the county of Worcester; for repairing, improving, and maintaining the bridge over the river Avon within the said borough; and for selling certain waste lands within the said borough, and for appropriating the monies arising from such sales towards the purposes therein mentioned. [3 Geo. 4, c. 67.]
EXETER . . .	An Act for enlightening the streets within the city of Exeter and suburbs thereof. [1 Geo. 3.]
	An Act for better repairing the streets, lanes, and passages within the city of Exeter and county of the said city; and for amending an Act passed in the first year of his present Majesty, intituled "An Act for enlightening the streets within the city of Exeter and suburbs thereof;" and for the better regulating of the watch within the said city and county, and for otherwise improving the same. [46 Geo. 3, c. 39.]
	An Act for better and more effectually paving, lighting, cleansing, watching, and otherwise improving the streets, ways, and other public passages and places in the city and county of the city of Exeter. [50 Geo. 3, c. 146.]
	An Act for better paving, lighting, watching, cleansing, and otherwise improving the city of Exeter and county of the same city. [2 & 3 Will. 4, c. 106.]
FAVERSHAM . .	An Act for the better paving, repairing, cleansing, lighting, and watching the highways, streets, lanes, and other public passages and places within the town and liberty of Faversham in the county of Kent, and also certain places near or adjoining thereto; and for removing and preventing encroachments, obstructions, nuisances, and annoyances therein. [29 Geo. 3, c. 69.]

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FOLKESTONE . .	An Act for paving, repairing, and cleansing the highways, streets, and lanes in the town of Folkestone, and liberty thereof, in the county of Kent, and for removing and preventing nuisances and annoyances therein. [36 Geo. 3, c. 49.]
GATESHEAD . .	An Act for cleansing, lighting, and otherwise improving certain streets and places within and near the town and borough of Gateshead, in the county of Durham. [54 Geo. 3, c. 109.]
GLASTONBURY . .	An Act for paving and improving the streets and other public passages and places in the parishes of St. John the Baptist and Saint Benedict in the town of Glastonbury in the county of Somerset. [51 Geo. 3, c. 173.]
GLOUCESTER . .	An Act for the more effectual relief and employment of the poor within the city of Gloucester, and for lighting the streets of the said city. [4 Geo. 3, c. 60.]
	An Act for rebuilding the bridge over the river Severn at Maisemore, near the city of Gloucester; for raising, widening, and securing Over's causeway leading from the said city towards Maisemore aforesaid; and for enforcing the proper paving and cleansing of the several streets within the said city, and for removing nuisances and annoyances therefrom, and preventing the like in future. [17 Geo. 3, c. 68.]
	An Act for erecting a new gaol, and for removing certain gateways, in the city of Gloucester, and for amending the several Acts passed for the maintenance and support of the poor of the said city, and for lighting, paving, and regulating the streets there. [21 Geo. 3, c. 74.]
	An Act for establishing a proper place for holding markets and fairs for the sale of live stock in the city of Gloucester and the suburbs thereof, and for opening convenient avenues thereto, and for watching and otherwise improving the said city. [1 & 2 Geo. 4, c. 22.]
	An Act to provide for lighting the suburbs of the city of Gloucester with gas. [4 Will. 4, c. 44.]

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GODALMING . .	An Act for paving, lighting, watching, and otherwise improving the town of Godalming in the county of Surrey. [6 Geo. 4, c. 177.]
GRAVESEND . .	An Act for paving, cleansing, and lighting the high-street, east-street, and west-street, in the town and parishes of Gravesend and Milton, in the county of Kent, and for lighting the other streets; and for removing all encroachments and annoyances within the said town and parishes. [13 Geo. 3, c. 15.]
	An Act for altering and enlarging the powers of an Act of the thirteenth year of his present Majesty, for improving the town and parishes of Gravesend and Milton in the county of Kent; and for the better assessment and collection of the poor rates and other rates within the parish of Gravesend. [56 Geo. 3, c. 77.]
	An Act for paving, cleansing, lighting, watching, and improving the town and parishes of Gravesend and Milton, in the county of Kent, and for removing and preventing nuisances and annoyances therein. [3 Geo. 4, c. 51.]
GUILDFORD . .	An Act establishing, regulating, and maintaining a nightly watch, and for enlightening the open places and streets, within the town of Guildford, in the county of Surrey. [32 Geo. 2.]
	An Act for paving, cleansing, and otherwise improving the town of Guildford, in the county of Surrey. [52 Geo. 3, c. 51.]
HARWICH . .	An Act for paving, cleansing, lighting, and watching the town of Harwich, in the county of Essex, and supplying the same with water. [59 Geo. 3, c. 118.]
HASTINGS . .	An Act for better paving, lighting, watching, and otherwise improving the town of St. Leonard, in the county of Sussex. [2 Will. 4, c. 45.]
	An Act for paving, lighting, watching, cleansing, and improving the town and port of Hastings, in the county of Sussex, and for establishing and regulating markets therein, and supplying the inhabitants thereof with water, and for other purposes. [2 Will. 4, c. 91.]

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HEREFORD . .	An Act for paving, repairing, cleansing, and lighting the streets and lanes in the city of Hereford and suburbs thereof, and removing nuisances and annoyances therein; and for creating a fund towards the expenses thereof, by inclosing divers waste grounds within the liberties of the said city; and for the better application of charity money; for setting the poor people of the said city to work; and to enable bodies corporate to alienate their houses and lands within the said city. [14 Geo. 3, c. 38.]
	An Act to enlarge, amend, and render more effectual the provisions of an Act of his present Majesty, for paving and lighting the city of Hereford, and removing nuisances therein; and for enabling the corporation of the said city to sell and apply the produce of certain messuages and lands in establishing market-places, and otherwise improving the said city. [56 Geo. 3, c. 23.]
HERTFORD . .	An Act for paving the footways, and cleansing, lighting, and watching the streets and other public passages and places, within the borough of Hertford, and removing and preventing obstructions, nuisances, and annoyances therein. [28 Geo. 3, c. 75.]
	An Act to amend and extend the provisions of an Act for paving and improving the streets and other public passages and places within the borough of Hertford. [9 Geo. 4, c. 38.]
HUNTINGDON . .	An Act for paving, cleansing, and lighting the high-street and other places within the town of Huntingdon, and for removing and preventing nuisances and annoyances therein. [25 Geo. 3, c. 9.]
HYTHE . . .	An Act for paving, repairing, cleansing, lighting, and watching the highways, streets, and lanes in the town and port of Hythe and liberty thereof in the county of Kent, and for removing and preventing nuisances and annoyances therein. [38 Geo. 3, c. 16.]
IPSWICH . . .	An Act for the pavying of the towne of Ipswiche. [13 Eliz. c. 24.]
	An Act for paving, lighting, cleansing, and other-

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IPSWICH—*continued.*	wise improving the town of Ipswich in the county of Suffolk, and for removing and preventing encroachments, obstructions, and annoyances therein. [33 Geo. 3, c. 92.]
	An Act for amending and rendering more effectual an Act passed in the thirty-third year of the reign of his present Majesty, for paving, lighting, cleansing, and otherwise improving the town of Ipswich in the county of Suffolk, and for removing and preventing encroachments, obstructions, and annoyances therein. [37 Geo. 3, c. 44.]
	An Act for amending and enlarging the powers of two Acts of his present Majesty, for paving, lighting, cleansing, and improving the town of Ipswich in the county of Suffolk, and removing and preventing encroachments, obstructions, and annoyances therein; and for watching the said town. [55 Geo. 3, c. 26.]
	An Act to alter and amend several Acts of his late Majesty's reign, for paving, lighting, and otherwise improving the town of Ipswich in the county of Suffolk. [1 & 2 Geo. 4, c. 104.]
KINGSTON-UPON-HULL.	An Act for explaining, amending, and making more effectual several Acts of Parliament relating to the maintenance and employment of the poor of the town of Kingstone-upon-Hull: and for better paving, preserving, and cleansing the streets, squares, lanes, and alleys in the said town, and preventing obstructions therein; and for preserving the lamps which shall be set up to enlighten the streets of the said town, and securing the property of such lamps to the owners. [28 Geo. 2, c. 27.]
	An Act to amend and render more effectual several Acts made for cleansing and enlightening the streets of the town of Kingstone-upon-Hull, and for preventing annoyances therein. [2 Geo. 3.]
	An Act for amending and supplying the deficiencies of an Act passed in the second year of the reign of his present Majesty King George the Third, intituled "An Act to amend and render more effectual several Acts made for cleansing and enlightening the streets of the town of Kingstone-upon-Hull, and for preventing annoyances therein." [4 Geo. 3.]

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KINGSTON-UPON-HULL—*continued.*	An Act for building a new gaol for the town and county of the town of Kingstone-upon-Hull, and for purchasing an additional burial-ground for the use of the parish of the Holy Trinity in the said town; for regulating the affairs of hackney-coachmen, chairmen, and porters, and the prices of carriage of goods; for altering the time of lighting lamps; for ascertaining the breadth of party walls, and for preventing certain nuisances within the said town, liberties, and precincts thereof; for amending an Act of the fourteenth year of the reign of his present Majesty, for making and establishing public quays or wharfs at Kingstone-upon-Hull, in respect to such as are or may be built opposite to certain staiths in the said Act described, and for other purposes. [23 Geo. 3, c. 55]
	An Act for paving, cleansing, lighting, watching, and regulating the streets, squares, lanes, and other public passages and places within the parish of Sealcotes in the East Riding of York, and for removing and preventing nuisances, annoyances, encroachments, and obstructions, and for licensing and regulating hackney-coaches, chairs, porters, coal-carriers and water-carriers, trucks, carts, and other carriages, within the said parish. [41 Geo. 3, c. 30.]
	An Act for watching and more effectually lighting, cleansing, and otherwise improving the town of Kingstone-upon-Hull, and the liberty of Trippett and the lordship of Mytton in the parish of the Holy Trinity in the said town, and for preventing nuisances therein; and also for preventing frauds and impositions in the quality, measure, and carriage of coals sold in the said town and the neighbourhood thereof. [50 Geo. 3, c. 41.]
KIDDERMINSTER	An Act for paving, cleansing, lighting, watching, and otherwise improving the streets and other public passages and places in Kidderminster, in the county of Worcester. [53 Geo. 3, c. 83.]
KINGSTON-UPON-THAMES.	An Act for the better lighting and watching the town of Kingstone-upon-Thames in the county of Surrey, and for removing and preventing all obstructions, encroachments, and nuisances therein. [13 Geo. 3, c. 61.]

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KING'S LYNN . .	An Act for paving, cleansing, lighting, and watching, and improving the borough of King's Lynn in the county of Norfolk, and for removing nuisances and annoyances therein; and for holding the Saturday and beast markets within more convenient parts of the said borough. [43 Geo. 3, c. 37.]
LANCASTER . .	An Act for lighting, watching, paving, cleansing, and improving the streets, highways, and places within the borough and town of Lancaster in the county palatine of Lancaster. [5 Geo. 4, c. 66.]
LEEDS . . .	An Act for better supplying the town and neighbourhood of Leeds in the county of York with water; and for more effectually lighting and cleansing the streets and other places within the said town and neighbourhood, and removing and preventing nuisances, annoyances, encroachments, and obstructions therein. [30 Geo. 3, c. 68.]
	An Act to amend and enlarge the powers of an Act passed in the thirtieth year of his present Majesty, for better supplying the town and neighbourhood of Leeds in the county of York with water, and for more effectually lighting and cleansing the streets and other places within the said town and neighbourhood, and for removing and preventing nuisances and annoyances therein; and for erecting a court house and prison for the borough of Leeds; and for widening and improving the streets and passages in the said town. [49 Geo. 3, c. 122.]
	An Act to amend and enlarge the powers and provisions of an Act of his present Majesty, for erecting a court-house and prison for the borough of Leeds in the county of York, and other purposes; to provide for the expense of the prosecution of felons in certain cases; and to establish a police and nightly watch in the town, borough, and neighbourhood of Leeds aforesaid. [55 Geo. 3, c. 42.]
	An Act for lighting, cleansing, and improving the town and neighbourhood of Leeds in the county of York. [5 Geo. 4, c. 124.]
LEOMINSTER . .	An Act for inclosing lands in the borough of Leo-

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LEOMINSTER—*cont.d.*	minster, in the county of Hereford, and in the township of Luston in the parish of Eye, in the said county; and for paving, and otherwise improving the streets and other public places within the town of Leominster in the said county. [48 Geo. 3, c. 148.]
LICHFIELD . .	An Act for paving, cleansing, lighting, watching, and regulating streets, lanes, and other public passages and places within the city of Lichfield, and the suburbs thereof. [46 Geo. 3, c. 42].
LINCOLN . . .	An Act for paving, lighting, watching, and improving the city of Lincoln, and the bail and close of Lincoln, and for regulating the police thereof. [9 Geo. 4, c. 27.]
LIVERPOOL . .	An Act for the building a church in the town of Liverpool in the county palatine of Lancaster, and for enlightening and cleansing the streets of the said town, and for keeping and maintaining a nightly watch there. [21 Geo. 2, c. 24.]
	An Act for opening, making, widening, and altering certain streets, passages, and places within the town of Liverpool in the county palatine of Lancaster; for supplying the said town with fresh and wholesome water; for removing and preventing nuisances and annoyances therein; for appointing additional market-places; and for extending so much of the powers of an Act of the second year of his present Majesty as relates to hackney coachmen, chairmen, carters, and porters, to a certain distance beyond the liberties of the said town. [26 Geo. 3, c. 12.]
	An Act for enlarging and varying some of the powers contained in certain Acts of Parliament relating to the lighting, watching, and cleansing the streets and other places within the town of Liverpool, and for removing and preventing nuisances and annoyances therein. [28 Geo. 3, c. 13.]
	An Act for the reviving, extending, and varying the powers of an Act passed in the twenty-sixth year of his late Majesty King George the Third, for making and widening certain streets, passages and places in the town of Liverpool in the county palatine of Lancaster, and for several

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LIVERPOOL—*cont.d.*	other purposes in the said Act mentioned; and also for further improving the said town. [1 Geo. 4, c. 13.]
	An Act for widening and improving certain streets in the town of Liverpool in the county palatine of Lancaster; for the further prevention of nuisances and annoyances in the said town; for the regulation of weighing machines, weights, and measures; and the establishment of a fire police therein. [7 Geo. 4, c. 57.]
	An Act for the better pavage and sewerage of the town of Liverpool in the county palatine of Lancaster; and for settling the boundaries of the said town and the township of Kirkdale, and parts of the townships of Everton and West Derby. [11 Geo. 4, c. 15.]
LOUTH . . .	An Act for paving, lighting, watching, cleansing, regulating, and otherwise improving the town and parish of Louth, in the county of Lincoln. [6 Geo. 4, c. 129.]
LUDLOW . . .	An Act for paving the footpaths within the borough of Ludlow in the county of Salop, and for lighting, watching, and otherwise improving the said borough. [33 Geo. 3, c. 25.]
MACCLESFIELD . .	An Act for lighting, watching, and regulating the police within the borough of Macclesfield in the county of Chester. [54 Geo. 3, c. 23.]
	An Act for better lighting, watching, and improving the borough and township of Macclesfield in the county of Chester, and regulating the police thereof. [6 Geo. 4, c. 96.]
	An Act for better supplying the inhabitants of the borough of Macclesfield in the county of Chester with water, and to establish the rates payable for the same. [11 Geo. 4, c. 124.]
MAIDSTONE . .	An Act for widening, improving, regulating, paving, cleansing, and lighting the streets, lanes, and other public passages and places within the King's town of Maidstone in the county of Kent; for removing and preventing encroachments, obstructions, nuisances, and annoyances therein; for better supplying the said town with

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MAIDSTONE—*cont.d.*	water; and for repairing the highways within the parish of Maidstone. [31 Geo. 3, c. 62.]
	An Act for altering and amending an Act passed in the thirty-first year of the reign of his present Majesty, intituled "An Act for widening, improving, regulating, paving, cleansing, and lighting the streets, lanes, and other public passages and places within the King's town of Maidstone in the county of Kent; for removing and preventing encroachments, obstructions, nuisances, and annoyances therein; for better supplying the said town with water; and for repairing the highways within the parish of Maidstone;" and for raising a further sum of money for completing the purposes of the said Act. [42 Geo. 3, c. 90.]
	An Act to enlarge the powers of three Acts of his present Majesty, for paving, cleansing, and lighting the streets and other public places within the King's town of Maidstone in the county of Kent, and better supplying the inhabitants with water; and for watching the said town, and making public wharfs therein. [59 Geo. 3, c. 16.]
MONMOUTH . .	An Act for paving the footways, and cleansing, lighting, and watching the streets, in the town of Monmouth. [58 Geo. 3, c. 81.]
NEWARK . .	An Act for the better paving, lighting, and cleansing of the streets, lanes, and other public passages and places in the town of Newark-upon-Trent in the county of Nottingham, and for removing the market for butcher's meat in the said town, and for regulating the said market; and for repealing an Act made in the twenty-seventh year of the reign of her late Majesty Queen Elizabeth, intituled "An Acte for the pavinge of Newarke-upon-Trent in the countie of Nottingham." [38 Geo. 3, c. 26.]
NEWBURY . .	An Act for lighting, watching, paving, cleansing, and improving the streets, highways, and places within the borough, town, and parish of Newbury, and the tithing or hamlet of Speenhamland in the parish of Speen in the county of Berks. [6 Geo. 4, c. 72.]

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NEWCASTLE-UNDER-LYME.	An Act for paving, lighting, watching, cleansing, regulating, and improving the borough of Newcastle-under-Lyme. [59 Geo. 3, c. 71.]
NEWCASTLE-UPON-TYNE.	An Act for lighting the streets and other places, and maintaining a regular and nightly watch within the town and county of the town of Newcastle-upon-Tyne, and for regulating the hackney-coachmen and chairmen, cartmen, porters, and watermen within the same. [3 Geo. 3.]
	An Act for widening, enlarging, and cleansing the streets, lanes, and other public places, and for opening new streets, markets, and passages, within the town of Newcastle-upon-Tyne, and the liberties thereof, and for removing and preventing annoyances therein; and for regulating the public markets, and common stage waggons, drays, and carts carrying goods for hire. [26 Geo. 3, c. 39.]
	An Act for lighting and watching the streets and other places without the walls but within the liberties of Newcastle-upon-Tyne. [52 Geo. 3, c. 76.]
NEWPORT (Isle of Wight).	An Act for paving, repairing, cleansing, lighting, and watching the streets, lanes, ways, passages, and places within the borough of Newport in the Isle of Wight; and for the removal of present and the prevention of future incroachments, nuisances, and annoyances therein. [26 Geo. 3, c. 119.]
NEWPORT (Monmouth).	An Act for lighting, watching, paving, cleansing, and improving the streets, highways, and places within the town and borough of Newport in the county of Monmouth. [7 Geo. 4, c. 6.]
NORTHAMPTON .	An Act for paving, cleansing, lighting, and watching the town of Northampton, and for removing and preventing incroachments, obstructions, and annoyances therein. [18 Geo. 3, c. 79.]
	An Act for altering and amending an Act passed in the eighteenth year of the reign of his present Majesty, intituled "An Act for paving, cleansing, lighting, and watching the town of Northampton, and for removing and preventing incroachments, obstructions, and annoyances

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NORTHAMPTON—*continued.*	therein; and for continuing the term of certain tolls by the said Act." [37 Geo. 3, c. 42.]
	An Act for better paving, lighting, watching, and improving the town of Northampton; and for taking down, widening, and rebuilding the bridge over the Nine or Nen, at the south entrance of the said town, and improving the avenues to the said bridge. [54 Geo. 3, c. 193.]
NORWICH . .	An Act for better paving, lighting, cleansing, watching, and otherwise improving the city of Norwich. [46 Geo. 3, c. 67.]
	An Act for amending and enlarging an Act of his late Majesty, for better paving, lighting, cleansing, and otherwise improving the city of Norwich. [6 Geo. 4, c. 78.]
NOTTINGHAM . .	An Act for enlightening the streets, lanes, and passages within the town and county of the town of Nottingham. [2 Geo. 3.]
	An Act to alter, amend, and enlarge the powers of an Act of the second year of his late Majesty's reign, intituled "An Act for enlightening the streets, lanes, and passages within the town and county of the town of Nottingham." [1 & 2 Geo. 4, c. 70.]
OSWESTRY . .	An Act for paving, cleansing, lighting, watching, and otherwise improving the streets and other public passages and places in the town and borough of Oswestry in the county of Salop. [49 Geo. 3, c. 140.]
OXFORD . . .	An Act for amending certain of the mileways leading to Oxford; for making a commodious entrance through the parish of Saint Clement; for rebuilding or repairing Magdalen Bridge; for making commodious roads from the said bridge through the university and city and the avenues leading thereto; for cleansing and lighting the streets, lanes, and places within the said university and city and the suburbs thereof, and the parish of Saint Clement; for removing nuisances and annoyances therefrom, and preventing the like for the future; for empowering colleges and corporations to alienate their estates there; for

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OXFORD—*continued.*	removing, holding, and regulating markets within the said city; and for other purposes. [11 Geo. 3, c. 19.]
	An Act to amend and enlarge the powers of an Act passed in the eleventh year of his present Majesty's reign, for performing several works, and making improvements within the university and city of Oxford and the suburbs thereof, and in the adjoining parish of Saint Clement. [21 Geo. 3, c. 47.]
	An Act for enlarging the term and powers of two Acts of his present Majesty, for amending certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof, and adjoining parish of Saint Clement, and for other purposes. [52 Geo. 3, c. 72.]
	An Act for continuing the term and amending and enlarging the powers of three Acts of his Majesty King George the Third, for amending certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof, and adjoining parish of Saint Clement, and for other purposes in the said Acts mentioned. [5 & 6 Will. 4, c. —.]
PEMBROKE . .	An Act for supplying with water the town of Pembroke and the neighbourhood thereof, within the county of Pembroke. [9 Geo. 4, c. 119.]
PLYMOUTH . .	An Act for improving the town of Plymouth, in the county of Devon. [51 Geo. 3, c. 102.]
	An Act for better paving, lighting, cleansing, watching, and improving the town and borough of Plymouth in the county of Devon; and for regulating the police thereof, and for removing and preventing nuisances and annoyances therein. [5 Geo. 4, c. 22.]
PONTEFRACT . .	An Act for paving and otherwise improving the streets and other public passages within the town of Pontefract, in the county of York; for better supplying the said town with water; and for altering and amending an Act passed in the twentieth year of his present Majesty, intituled "An Act for dividing the park of Pontefract, in the county of York, and for other purposes mentioned therein." [50 Geo. 3, c. 40.]

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PORTSMOUTH . .	An Act for the better paving and cleansing the streets and other public passages in the town of Portsmouth, in the county of Southampton, and for preventing nuisances and annoyances therein, and for widening and rendering the same more commodious. [8 Geo. 3.]
	An Act for lighting and watching the town of Portsmouth, in the county of Southampton; and for explaining and amending an Act passed in the eighth year of his present Majesty's reign, for the better paving and cleansing the streets and other public passages in the said town, and for preventing nuisances and annoyances therein, and for widening and rendering the same more commodious. [16 Geo. 3, c. 59.]
	An Act for the better paving, cleansing, widening, and regulating the streets, courts, roads, lanes, ways, rows, alleys, and public passages and places within the town of Portsea, in the county of Southampton; and for removing and preventing nuisances, annoyances, and obstructions within the said town. [32 Geo. 3, c. 103.]
	An Act for better lighting and watching the town of Portsea, in the county of Southampton; and for amending an Act passed in the thirty-second year of his late Majesty, for paving, cleansing, and regulating the streets and public places within the said town, and removing and preventing nuisances and annoyances therein. [7 Geo. 4, c. 64.]
PRESTON . . .	An Act to light, watch, pave, cleanse, and improve the streets, highways, and places within the borough of Preston, in the county palatine of Lancaster, and to provide fire engines and firemen for the protection of the said borough. [55 Geo. 3, c. 22.]
READING . . .	An Act for better paving, lighting, cleansing, watching, and otherwise improving the borough of Reading, in the county of Berks. [7 Geo. 4, c. 56.]
ROCHESTER . .	An Act for paving, cleansing, lighting, and watching the high streets and lanes in the parish of Saint Nicholas, within the city of Rochester and parish of Strood, in the county of Kent, and for making a road through Star Lane, across certain

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ROCHESTER—*cont^d.*	fields adjoining thereto, to Chatham Hill in the said county. [9 Geo. 3, c. 32.]
SANDWICH . .	An Act for the better repairing, paving, cleansing, lighting and watching the highways, streets, and lanes of and in the town and port of Sandwich, in the county of Kent, and in the several parishes of Saint Peter the Apostle, Saint Mary the Virgin, and Saint Clement, in the said town, port, and county; and for removing and preventing encroachments, nuisances, obstructions, and annoyances in the said highways, streets, and lanes, and on the common quay belonging to the said town and port, and in the haven adjoining to the said quay, and the bridge built over the said haven; and for regulating the berths and mooring places of vessels at the said quay, and the proper times for vessels to pass through the said bridge. [27 Geo. 3, c. 67.]
SARUM, NEW . .	An Act for the better repairing and paving the highways, streets, and watercourses within the city of New Sarum; and for enlightening the streets, lanes, and passages, and better regulating the nightly watch within the said city. [10 Geo. 2.]
	An Act to alter, extend and amend the powers of two Acts passed in the tenth year of the reign of his late Majesty King George the Second, and in the twelfth year of the reign of his present Majesty, for better paving, lighting, and watching the city of New Sarum, in the county of Wilts. [55 Geo. 3, c. 23.]
SCARBOROUGH . .	An Act for paving and otherwise improving the streets and other places in the township of Scarborough, in the north riding of the county of York, and for licensing hackney-coaches and establishing other regulations in the said township. [41 Geo. 3, c. 94.]
SHREWSBURY . .	An Act for the better paving and amending, cleansing, enlightening, and watching the streets, highways, lanes, and passages within the town of Shrewsbury, in the county of Salop. [29 Geo. 2, c. 78.]
	An Act for repealing an Act passed in the twenty-ninth year of the reign of his Majesty King George the Second, for paving, lighting, and

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SHREWSBURY—*cont.*	watching the town of Shrewsbury, in the county of Salop; and for granting other powers in lieu thereof. [1 & 2 Geo. 4, c. 58.]
SOUTHAMPTON . .	An Act for the better paving, repairing, and cleansing the streets and other public passages in the several parishes and wards of St. Michael, Saint John, Holy Rood, Saint Lawrence, All Saints-within-the-Bar, All Saints-without-the-Bar, and East Street and Bay Row, within the town of Southampton and liberties thereof, and for preventing nuisances and annoyances therein; and for widening and rendering the same more commodious, and for lighting and watching the said streets and public passages. [10 Geo. 3, c. 25.]
	An Act to amend an Act made in the tenth year of his present Majesty, for paving, repairing, cleansing, lighting, and watching the streets and other public passages in the town of Southampton. [50 Geo. 3, c. 169.]
STAFFORD . .	An Act for paving, lighting, watching, cleansing, regulating, and improving the streets, lanes, and other public passages and places within the borough of Stafford in the county of Stafford. [11 Geo. 4, c. 44.]
ST. ALBANS . .	An Act for paving the footways and crosspaths, and for cleansing, lighting, watching, and regulating the streets and other public passages and places within the borough of St. Alban in the county of Hertford. [44 Geo. 3, c. 8.]
STOCKPORT . .	An Act for lighting, cleansing, watching, and otherwise improving the streets, lanes, and other public passages and places within the town of Stockport, in the county palatine of Chester; and for regulating the police of the said town. [7 Geo. 4, c. 118.]
STOCKTON . .	An Act for lighting, cleansing, and otherwise improving the town and borough of Stockton in the county of Durham. [1 Geo. 4, c. 62.]
SUNDERLAND . .	An Act for lighting and watching the town of Bishop Wearmouth and Bishop Wearmouth Panns, for cleansing, paving, and regulating the footpaths, and for removing and preventing nuisances and encroachments therein. [50 Geo. 3, c. 25.]

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SUNDERLAND—*cont^d.*	An Act for paving. lighting, watching, and cleansing the town of Sunderland near the sea in the county of Durham; for removing the market; for building a town hall or market house; and for otherwise improving the said town; and for establishing a watch on the river Wear. [50 Geo. 3, c. 27.]
	An Act for paving, lighting, watching, cleansing, and improving the town and parish of Sunderland near the sea in the county of Durham, for removing the market, and for otherwise improving the said town. [7 Geo. 4, c. 120.]
SWANSEA . . .	An Act for better paving, repairing, cleansing, lighting, and watching the several streets and other public passages and places within the town and franchise of Swansea in the county of Glamorgan, and for removing and preventing nuisances, annoyances, and obstructions therein. [49 Geo. 3, c. 79.]
TEWKESBURY . .	An Act for paving, repairing, cleansing, lighting, and watching the streets, lanes, ways, passages, and places within the town of Tewkesbury, and the precincts thereof, in the county of Gloucester; for the removal of present and prevention of future encroachments, nuisances, and annoyances therein; for regulating carts and other carriages, and ascertaining the rates of carriage; and for widening some part of the street called Church-street, within the said town. [26 Geo. 3, c. 17.]
TIVERTON . .	An Act for the better and more easy rebuilding of the town of Tiverton in the county of Devon, and for determining differences touching houses and buildings burnt down or demolished by reason of the late dreadful fire there, and for the better preventing dangers from fire for the future. [5 Geo. 2.]
	An Act for paving and otherwise improving the town of Tiverton in the county of Devon. [34 Geo. 3, c. 52.]
	An Act for amending and enlarging the powers and provisions of an Act of his late Majesty King George the Third, intituled "An Act for paving and otherwise improving the town of Tiverton

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TIVERTON—*cont^d.*	in the county of Devon, and for lighting the said town." [3 Geo. 4, c. 60.]
TRURO	An Act for paving, cleansing, lighting, and widening the streets, lanes, and passages, for removing and preventing encroachments, nuisances, and annoyances, and for regulating the porters and drivers of carts, within the borough of Truro, and part of the adjoining parishes, in the county of Cornwall. [30 Geo. 3, c. 62.]
WALLINGFORD . .	An Act for paving the footways, and for cleansing, lighting, watching, and regulating the streets, lanes, passages, and places within the borough of Wallingford in the county of Berks, and for removing and preventing nuisances, annoyances, encroachments, and obstructions therein. [35 Geo. 3, c. 75.]
WALSALL . .	An Act for paving, lighting, watching, cleansing, widening, regulating, and otherwise improving the town of Walsall, and the neighbourhood thereof, within the parish of Walsall in the county of Stafford. [5 Geo. 4, c. 68.]
WELLS . . .	An Act for more effectually repairing and improving certain roads leading to and from the city or borough of Wells in the county of Somerset; and for paving, cleansing, lighting, watching, and watering the said roads, and the streets, lanes, and public passages within the said city or borough, the liberty of Saint Andrew, and suburbs of the said city and borough, and removing and preventing nuisances and annoyances therein. [1 & 2 Geo. 4, c. 12.]
	An Act for lighting with gas the city and borough of Wells in the county of Somerset, the liberty of Saint Andrew, and suburbs of the said city or borough. [2 Will. 4, c. 37.]
WEYMOUTH and MELCOMBE REGIS .	An Act for paving, cleansing, lighting, and watching the borough and town of Weymouth and Melcombe Regis in the county of Dorset, and for removing all encroachments, obstructions, and annoyances therein. [16 Geo. 3, c. 57.]
	An Act for more effectually cleansing, lighting, and watching the borough and town of Weymouth and Melcombe Regis in the county of Dorset, and removing encroachments and an-

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WEYMOUTH and MELCOMBE REGIS—*continued.*	noyances therein; for licensing and regulating chairmen and other persons plying for hire, for establishing markets, and for giving further powers to the quay master of the harbour of the said town. [50 Geo. 3, c. 187.]
WINCHESTER . .	An Act for the better paving, repairing, cleansing, lighting, and watching the streets, and other public passages within the city of Winchester, and also within the several parishes of Saint Bartholomew, Hide, Saint John's in the Soke, Saint Peter's Cheesehill, Saint Swithin and Saint Michael in the West Soke, in the suburbs of the said city; and for preventing nuisances and annoyances therein, and for widening and rendering the same more commodious. [11 Geo. 3, c. 9.]
	An Act for amending and enlarging the powers of an Act of his present Majesty, for paving, cleansing, lighting, and watching the streets and public passages in the city of Winchester, and several parishes in the suburbs thereof, and for removing and preventing nuisances therein. [48 Geo. 3, c. 2.]
WINDSOR . .	An Act for the better paving, cleansing, lighting, and watching the streets and lanes in the parish and borough of New Windsor in the county of Berks, and for preventing nuisances and annoyances therein. [9 Geo. 3, c. 10.]
WISBEACH . .	An Act for the establishing a cattle market within the town of Wisbeach in the Isle of Ely; for taking down and removing shambles therein; for paving, cleansing, lighting, and watching the said town, and removing nuisances therein; for preserving and improving the port and harbour of Wisbeach, and for regulating the pilots belonging thereto. [50 Geo. 3, c. 206.]
WORCESTER . .	An Act for better supplying the city of Worcester and the liberties thereof with water; and for more effectually paving, lighting, watching, and otherwise improving the said city. [4 Geo. 4, c. 69.]
YARMOUTH (GREAT).	An Act for better paving, lighting, cleansing, and watching the town of Great Yarmouth in the county of Norfolk, and for removing nuisances

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YARMOUTH (GREAT) —*continued.*	and annoyances therein, and for making other improvements in the said town. [50 Geo. 3, c. 23.]
YORK	An Act for paving, lighting, watching, and improving the city of York and the suburbs thereof, and the liberty of Saint Peter within the said city, and for regulating the police of the same respectively. [6 Geo. 4, c. 127.]
	An Act for improving and enlarging the market places within the city of York, and rendering the approaches thereto more commodious; and for regulating and maintaining the several markets and fairs held within the same city and the suburbs thereof; and for amending an Act of his late Majesty, for paving, lighting, watching, and improving the said city; and other purposes. [3 Will. 4, c. 62.]

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MUNICIPAL BOUNDARIES ACT (1).

6 & 7 WILL. 4, CAP. 103.

An Act to make temporary Provision for the Boundaries of certain Boroughs.

[20*th August*, 1836.

WHEREAS, by the provisions of an Act passed in the last session of Parliament, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, the boundaries of certain boroughs named in the Schedules (A.) and (B.) to the said Act annexed were made to include all the liberties of such boroughs and large tracts of land beyond the limits of the towns, and which ought not to be included therein: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said Act (2) for regulating

5 & 6 Will. 4, c. 76.

Part of the recited Act repealed.

(1) See "The Municipal Corporations Act, 1853" (16 & 17 Vict. c. 79, s. 2) post; by which it is enacted, that in every case in which an *existing* or *future* Act, passed after the 5 & 6 W. 4, c. 76, applies generally to the municipal corporations mentioned in the schedules to that Act, or applies generally to municipal corporations in England, such Act shall extend and apply to every municipal corporation in England erected after the passing of the 5 & 6 Will. 4. See also ss. 3 & 4 of the same Act.

(2) By s. 7 of the Municipal Corporation Act, the boroughs

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corporations as provides that the metes and bounds of every borough and county named in the said Act

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named in the *first sections* of the schedules (A.) and (B.) to that Act were to have their parliamentary boundaries, *i. e.* those which were settled by 2 & 3 Will. 4, c. 64; while the boroughs named in the *second sections* of the same schedules were to retain their then municipal boundaries. But the provision at the end of the same section, as to liberties (now repealed by the above section of this Act), had the effect of annexing to certain boroughs, liberties, and large tracts of land (*not detached*, which are provided for by ss. 7 & 8 of the Municipal Act) lying beyond the limits of the TOWNS, and which were not intended to be brought within the borough for the purposes of municipal government. It is now provided, with regard to the boroughs in the *first sections* of the schedules (A.) and (B.), that no part of any county, or of the liberties of any borough, town, or city, which was not, before the passing of the Municipal Act, *part of such borough, town, or city*, *or* within the parliamentary boundary of the same, shall be taken to be within the metes and bounds of any such borough, town, or city, *or within the county of* such borough, town, or city, &c. Thus providing, that if any part of the old borough or town (*proper*) was not included by the Parliamentary Boundary Act within such borough, &c., that part, as well as all such parts as were expressly, and for the first time, brought within the borough by the Parliamentary Boundary Act, should be within such borough for municipal purposes.

And with respect to the boroughs named in the *second sections* of the schedules, it is provided, that no part of any county, or of the liberties of any borough, town, or city, which was not part of such borough, town, or city before the passing of 2 & 3 Will. 4, c. 64, shall for the purposes of this Act be taken to be within the metes and bounds of any such borough, &c., *or within the county of such borough, town, or city*.

In addition to liberties, it will be observed that the present section mentions "*the county* of any borough, town, or city," and provides that the borough, town, or city is there-

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shall include the whole of the liberties of such borough and county, by land and by water, is hereby repealed; and that, notwithstanding any thing in the said Act contained, no part of any county, or of the liberties of any borough, town, or city, named in the first sections of the Schedules (A.) and (B.) annexed to the said Act for regulating Corporations, which before the passing of the said Act was not part of such borough, town, or city, or within the parliamentary boundary of such borough, town, or city, shall be taken to be within the metes and bounds of any such borough, town, or city, or within the county of such borough, town, or city, or to be within the jurisdiction of the justices of such

New provision as to boundaries of boroughs, &c.

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after to be the measure or boundary, *not only* of the borough, town, or city, *but also of the county of the borough, town, or city.* So that such portions of the counties of boroughs, towns, or cities as were not in July, 1832 (the date of the Parliamentary Boundary Act), parts of such *boroughs, towns, or cities*, will not, for municipal purposes, be deemed to be within such boroughs, towns, or cities. And to remove all doubt, it is further expressly provided that all such parts of counties of boroughs, towns, and cities, and of all such liberties, are to be taken to be within the county ("*other than a county of a borough*," *&c.*) wherein such parts are situated, or with which they have the longest common boundary.

The object of this provision is to confine the jurisdiction of the municipal officers within what may be termed fair municipal limits, or, in other words, to subtract from the government and taxes of the town mere agricultural parishes or country districts (over which by charter or otherwise the municipal authorities had certain jurisdiction), and to throw them into the neighbouring county.

See *Mayor &c. of Coventry* v. *Lytham*, 10 M. & W. 773, as to the construction of this section with respect to the city of Coventry; and 5 & 6 Vict. c. 110, post.

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borough, town, or city, or county of a borough, town, or city; and that no part of any county, or of the liberties of any borough, town, or city, named in the second section of the said Schedules (A.) and (B.) which was not part of such borough, town, or city before the passing of an Act passed in the second and third year of his Majesty, intituled *An Act to settle and describe the Divisions of Counties, and the Limits of Cities and Boroughs, in England and Wales, in so far as respects the Election of Members to serve in Parliament*, shall, for the purposes of the said Act, passed in the last session of Parliament, be taken to be within the metes and bounds of any such borough, town, or city, or within the county of such borough, town, or city, or to be within the jurisdiction of the justices of such borough, town, or city, or county of a borough, town, or city; but every such part, until parliament shall otherwise direct, shall be taken to be within and to be subject to the same jurisdiction as the county, riding, parts or divisions of a county, other than a county of a borough, town, or city, wherein such part is situated, or with which it has the longest common boundary (3): Provided also, that all the provisions of the

2 & 3 Will. 4, c. 64.

Proviso as to the liability of rate-pay-

(3) All matters and offences cognisable by virtue of any *local Act*, or otherwise, by any justice within any place which since the passing of this or the Municipal Corporation Act has ceased, or which may hereafter cease, to be part of any borough, or within the liberties thereof, shall be within the jurisdiction of the justices of the peace for the county, riding, &c., within which such place is situate (see 7 Will. 4 & 1 Vict. c. 78, s. 30). And by s. 31 of the same statute, all offences committed within any borough against any *local Act* are made

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said Act* for regulating corporations concerning the liability of the rate-payers of any place or precinct, which, under the provisions of this Act, shall not be included within any such borough, town, or city, or county of a borough, town, or city, to any debt to which the rate-payers of such borough, town, or city, or county of a borough, town, or city were liable to contribute before the passing of the said Act for regulating corporations, shall be applicable to such place or precinct as if the same had not been

ers to pre-existing debts.

* 5 & 6 Will. 4, c. 76, s. 8.

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cognisable by the borough justices, with the same powers as were before possessed by county justices therein. See also 16 & 17 Vict. c. 79, s. 9, post.

All county gaols, &c., which by the operation of this Act may have been included within the boundaries of any borough, are notwithstanding to be deemed to be and to remain part and parcel of the county at large, and under the *exclusive* jurisdiction of the county. See 7 Will. 4 & 1 Vict. c. 78, s. 41: see also the proviso in s. 8 of 5 & 6 Will. 4, c. 76.

By the operation of the present Act, and of the Parliamentary Boundary Act, a portion of a parish was added to the old borough of Stamford. In an action brought for a disturbance of a right of common, since the passing of the above Acts, the declaration alleged that the mayor, aldermen, and burgesses of the town and borough of Stamford had the right in question *for every admitted freeman inhabiting within the said town and borough*, and paying scot and lot within the same. It was held, that the right was stated too largely, the grant of the right of common having been made for the benefit of the freemen *residing in five parishes, i. e.* in the old borough; whereas it would enure, according to the declaration, to those residing in *six*. *Beardsworth* v. *Torkington*, 1 Q. B. 782; 1 G. & D. 482. (See ante, p. 4, in note (1) to s. 2 of 5 & 6 Will. 4, c. 76, *Hopkins* v. *Mayor &c. of Swansea*, 4 M. & W. 640.)

Quære, though in the above case the right claimed was untruly stated, whether it was not such a variance as might have been amended at the trial?

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included within the metes and bounds of such borough, town, or city, under the provisions of the said Act for regulating corporations: Provided also, that no election of any mayor, alderman, councillor, auditor, or assessor heretofore made, or any other proceeding whatsoever, in any such borough, town, or city, since the twenty-fifth day of December last, shall be liable to be questioned after the passing of this Act, by reason that any such part of any county, or liberties of any borough, town, or city, may or may not have been taken to be part of such borough, town, or city, under the provisions of the said Act.

Proviso as to the elections of mayor, &c.

Boundaries of the borough of Sunderland.

II. Provided always, and be it enacted, that, notwithstanding anything in this Act contained, the borough of Sunderland, for the purposes of the said Act passed in the last session of Parliament, and until Parliament shall otherwise direct, shall consist of the parish of Sunderland, the townships of Monkwearmouth and Monkwearmouth Shore, and so much of the townships of Bishop Wearmouth and Bishop Wearmouth Panns as is included within a circle of one mile from the centre of Wearmouth Bridge.

The division of boroughs into wards by the barristers not to be affected by the exclusion of any ward or part of a ward.

III. And be it enacted, that the division of every borough, town, and city into wards, by the barrister or barristers appointed in pursuance of the provisions of the said Act for regulating corporations, shall not be annulled or vitiated by the exclusion of any ward or wards, or any part of any of the said wards which shall be excluded from such borough, town, or city, by this Act; but the said division

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shall remain in all other respects in force until Parliament shall otherwise direct, as if the ward or wards, or part of a ward or wards, so excluded from the borough, town, or city, had not been at any time included therein: Provided nevertheless, that if any borough, town, or city, shall have been so divided into wards, that the whole of any one or more wards shall consist wholly of a district excluded from such borough, town, or city by this Act, the barrister or barristers who originally divided the borough, town, or city into wards shall, as soon as conveniently may be after the passing of this Act, assign the councillors who were chosen in such ward or wards to the remaining wards of the borough, town, or city, or such of them as he or they shall select, upon the same principles, or as nearly as may be, in his or their judgment, as were provided by the said Act for the guidance of the barristers in their assignment of councillors to each ward; and thenceforth, and until Parliament shall otherwise direct, the number of councillors in each of the remaining wards shall be the number originally assigned to such ward by the barrister or barristers, with the addition of the number so assigned to it by the barrister or barristers under this Act; and the councillors so assigned under this Act to each ward shall thenceforth be deemed to have been elected in the ward to which they shall have been respectively so assigned, and shall go out of office, and vacancies among them shall be filled at the same time and in the same manner as if the burgesses of the ward by whom they were originally elected had been burgesses of the ward to which they shall have been so assigned.

If a borough has been so divided that the whole of a ward shall consist of a district excluded by this Act, a new assignment of councillors to be made by the barrister until Parliament shall otherwise direct.

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Local Acts for the relief of the poor not to be affected.

IV. And be it enacted, that nothing contained in the said Act for regulating corporations shall be construed to affect any local Act heretofore passed for the relief and management of the poor, or to alter the district comprised within the provisions of any such local Act.

Nothing herein to affect the assessments of the land or assessed taxes, or the jurisdiction of the commissioners.

V. And be it enacted, that nothing contained in the said Act for regulating corporations shall be construed to affect or alter the assessments of the land tax or assessed taxes, or to extend or diminish the jurisdiction of any commissioners of land and assessed taxes; but that all manors, lands, tenements, and hereditaments, and all parishes and parts of parishes, and places, shall continue to be charged as heretofore towards the land tax charged upon the county or other district, of which they were a part before the passing of the said recited Act, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district, as they would have been if the said recited Act had not been passed.

Berwick-upon-Tweed declared a county to all intents but for parliamentary elections.

VI. And be it declared and enacted, that the borough and town of Berwick-upon-Tweed, within the limits assigned to it by the said Act, or hereafter to be assigned to it by authority of Parliament, shall be a county of itself to all intents and purposes, except only so far as relates to the return of a member or members to serve in Parliament; and that the provisions of the Act passed in the third and fourth years of his Majesty, intituled *An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance*, and the

3 & 4 Will. 4, c. 74.

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modes of assurance therein provided, shall extend and apply to lands locally situated in the said borough, town, and county, any law, statute, custom, or usage to the contrary notwithstanding.

MUNICIPAL FUNDS ACT.

6 & 7 WILL. 4, CAP. 104.

An Act for the better Administration of the Borough Fund in certain Boroughs.

[20*th August*, 1836.]

WHEREAS, by an Act passed in the last session of Parliament, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, provision was made for the payment of the rents and profits of the real and personal estate of the mayor, aldermen, and burgesses of certain boroughs named in the Schedules (A.) and (B.) to the said Act annexed, and also for the payment of certain penalties to a fund, to be called in each case "The Borough Fund" of that borough; and whereas certain difficulties have occurred in putting the said Act into execution, and certain penalties have been imposed, which ought not to be imposed, for the benefit of the said borough fund: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of

5 & 6 Will. 4, c. 76, s. 92.

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New securities may be given for old debts.

the same, that, from and after the passing of this Act, it shall be lawful for the council of any borough named in the said schedules to execute from time to time any deed or obligation in the name of the body corporate whose council they are, for securing repayment and satisfaction of any debt or obligation (1) contracted by or on behalf of the said body corporate before the passing of the said Act for regulating corporations.

Extending the power of disposition given to the council as to certain demises;

* 5 & 6 Will. 4, c. 76, s. 96.

and the power allowed to be exercised over the

II. And be it enacted, that the power of disposition given to the council of any body corporate in the instances of demises for seventy-five years, authorised by the said Act*, shall extend to the demise or lease thereof, either at a reserved rent or a fine, or both, as the council shall think fit; and the power of disposition allowed (2) by the said Act

(1) A corporation constituted under the 5 & 6 Will. 4, c. 76, borrowed of M. a sum of 200*l.*, to enable them to repay L., their then treasurer, sums which he had paid to creditors of the old corporation, and gave M. their promissory note for the amount. They did not, however, pay over this money to L., but allowed him to receive their then accruing income in reduction of what was due to him, and applied the 200*l.* to purposes to which the income would otherwise have been applicable. It was held that the corporation had no right to give this promissory note, for it was not given to secure a debt contracted before the passing of 5 & 6 Will. 4, c. 76. *Att.-Gen.* v. *Corporation of Lichfield*, 13 Sim. 847; *Reg.* v. *Town Council of Lichfield*, 4 Q. B. 893; Dav. & M. 491. But by 7 Will. 4 & 1 Vict. c. 78, s. 28, it is provided that money borrowed by the council for the discharge of *any pre-existing* debt, shall be deemed to be, within this section, a debt contracted before the passing of the Municipal Corporation Act.

(2) See ante, 5 & 6 Will. 4, c. 76, s. 94, p. 176.

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over the lands, tenements, and hereditaments of such body corporate, to be exercised with the approbation of the lords commissioners of his Majesty's Treasury, or any three of them, shall extend to the disposition of such lands, tenements, and hereditaments, with such approbation as aforesaid, whether by way of absolute sale, or by way of exchange, mortgage or charge, demise or lease, and to every other disposition of the same whatsoever, which shall be so approved of as aforesaid.

Lands, &c., with the approbation of the Treasury.

III. And be it enacted, that nothing in the said Act contained shall be construed to restrain the treasurer of any borough, under the direction of the council, from applying the proceeds of the sale of any advowson (1) or right of nomination or presentation to any benefice or ecclesiastical preferment directed by the said Act, which shall have been paid to him, or any part thereof, towards the liquidation of any debt contracted before the passing of the said Act, by the body corporate named in the said schedules in conjunction with such borough.

Treasurer of a borough may apply proceeds of sales as herein mentioned.

IV. And whereas by the said Act it is provided (2), that no person assigned to keep the peace

Persons assigned to keep the peace in any borough may

(1) By this section the corporation are enabled to apply the money arising from the sale of an advowson, &c., in the discharge of any debt contracted before the passing of 5 & 6 Will. 4, c. 76, under the provisions of which Act (see ss. 92, 129) the *principal* money derived from the sale must have been paid into the borough fund, and the interest or dividends only could have been expended.

(2) See s. 101 of 5 & 6 Will. 4, c. 76, ante, p. 188.

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act as justices in levying county rates made before May, 1836.

within any borough, town, or city under the provisions of the said Act shall, by virtue of such assignment, act as a justice of the peace in making or levying any county rate, or rate in the nature of a county rate; Be it enacted, that, notwithstanding anything in the said Act contained, it shall be lawful for any such person to act as a justice of peace in levying any county rate, or rate in the nature of a county rate, which shall have been legally made previously to the first day of May, one thousand eight hundred and thirty-six.

Mayor may issue his warrant for levying borough rate, &c.

V. And be it enacted, that in any case in which, for the purpose of levying any county rate, a warrant might be lawfully issued by one or more justices of the peace, a warrant may be lawfully issued in the like case by the mayor of any borough named in the said schedules, under his hand and the corporate seal of the said borough, whether the matter of such warrant relates to the borough rate or to the watch rate (1); and that, in every case in which, in a matter relating to the county rate, a warrant is required to be directed to or issued by a high constable, such warrant may, in a like matter relating to the borough rate or watch rate, be directed to or issued by the high constable of the borough, or any borough officer of the like description, or by any person or persons who may have been, or may hereafter be, appointed by the council of the borough, for the purpose of collecting the said borough rate or watch rate, or either of them.

(1) See 7 Will. 4 & 1 Vict. c. 81, s. 1, 8 & 9 Vict. c. 110, and 12 & 13 Vict. c. 65, post.

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Burgesses competent witnesses.

VI. And be it enacted, that no burgess of any borough named in the said schedules shall be deemed an incompetent witness in any suit or proceeding at law or in equity, by reason of his being a member of such body corporate, or interested in the borough fund of any borough.

Mayor, &c., if enrolled on burgess roll, not liable to penalty for so acting.

VII. And be it enacted, that, notwithstanding anything in the said Act contained (1), no person enrolled on the burgess roll for the time being of any borough named in the schedules to the said Act, and who shall act as mayor, alderman, or councillor, auditor or assessor, of such borough, shall be liable to any penalty for so acting, on the ground that he was not entitled to be on the burgess list (2) of such borough.

Corporate offices may be resigned on payment of the fine.

VIII. And whereas no provision is made in the said Act for resigning any corporate office on payment of a fine or otherwise; Be it enacted, that every person elected into any corporate office in any of the said boroughs may at any time resign such office on payment of the fine which he would have been liable to pay for non-acceptance of the same office (3): Provided that no person enabled by law Proviso for persons re-

(1) See ante, s. 53 of the Municipal Corporation Act, p. 90.

(2) As to the use of this term, see ante, p. 48.

(3) See sect. 51 of 5 & 6 Will. 4, c. 76, and the note, p. 84. Before the passing of this Act, it was doubted whether a party could *resign* a corporate office under the former Act: but the weight of old authorities is in favour of a person's doing so, if the corporation, or other competent body under the charter, are willing to accept such surrender or resignation.

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Refusing on conscientious grounds.

to make an affirmation (2) instead of taking an oath shall be liable to any fine for non-acceptance of office

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See *Rex* v. *Tidderley*, Sid. 14; Com. Dig. tit. Franchise (F. 30); *Rex* v. *Mayor of Ripon*, 1 Ld. Raym. 563; *Rex* v. *Lane*, 2 Ld. Raym. 1304.

In 2 Roll. Abr. 456, it is said, that an alderman, by the assent of the corporation, can resign and relinquish his office to the corporation; and the corporation may take such surrender *of right*, without any power given by the charter to take it.

It is clear that an officer constituted by election may resign without deed. *Rex* v. *Hughes*, 5 B. & C. 896. See *Rex* v. *Mayor of Ripon*, 1 Ld. Raym. 563; where it is stated, that "in London the aldermen send letters to acquaint the lord mayor and court of aldermen that they resign; and if another be elected in their place, it is a good resignation." In this case *Holt*, C. J., observed, "If a man speaks at large that he will not be an alderman, &c., that means nothing. But *e converso*, if he comes in an open assembly of the corporation, and there resigns his office, and declares that he will not continue in it longer, and desires them to accept his resignation, *and they accept it and elect another in his room*, it is a good resignation. See *Rex* v. *Payne*, 2 Chit. R. 367, where also it was held that the resignation in writing without deed was sufficient. In that case a *quo warranto* information was granted against a party who had acted after he had so resigned; but the fact of his having acted *after the resignation* was immaterial, if he had not originally a title to the office. Accordingly, in *Rex* v. *Warlow*, 2 M. & Sel. 75, a rule for a *quo warranto* was made absolute against a burgess of the borough of Pembroke who had resigned; Lord *Ellenborough* observing, that, "assuming it to be a valid resignation, still the rule must be made absolute, *for a resignation*

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(2) See sect. 21 of 5 & 6 Will. 4, c. 76, ante p. 41; and see post, 1 & 2 Vict. c. 5, and 1 & 2 Vict. c. 15, affording further relief to such persons.

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in any borough by reason of his refusal on conscientious grounds(3) to take any oath or make any de-

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was not an answer, though it might regulate the decision of the Court in imposing the fine." See *Reg.* v. *Morton*, 4 Q. B. 146; 2 G. & D. 400.

This section provides that the party may resign on the payment of the fine which he would have been liable to pay for non-acceptance of such office. See ante, s. 51 of the Municipal Corporation Act, and the notes to that section, pp. 84, 86.

It will be observed that there is no mode of resignation prescribed by this section; it will be expedient, therefore, for the council of every borough, by a bye-law, to regulate the steps to be taken in such a proceeding. In the absence, however, of any such bye-law, it seems that every resignation must be made to, and accepted by, "*the council*," who appear to stand in the place of the corporation at large. See *Staniland* v. *Hopkins*, 9 M. & W. 178.

Previously to the passing of the 5 & 6 Will. 4, c. 76, a corporate office could only have been surrendered to the corporation at large; or by charter, or prescription, or bye-law, *to a select body;* but by s. 6 of that Act, the council can do

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(3) The vagueness of these words is such as might afford great opportunity of evading a discharge of the public duties cast upon individuals, should they be disposed to avail themselves of it. Under the old Test and Corporation Acts, similar questions have arisen, but within a much narrower compass than would be the case if exemptions should be claimed under the words of the present section. Would a party be excused from being the sheriff of a county or the mayor of a borough, on the ground that he had *conscientious* scruples as to being engaged in any way in the punishment of a fellow creature? See *Larwood's case*, 1 Ld. Raym. 29, Carth. 306; *Reed's case*, 2 Ventr. 247; and the cases cited 1 Burn's Eccl. Law, tit. Dissenters; *Rex* v. *Grosvenor*, 2 Str. 1193, and *Harrison* v. *Evans*, Cowp. 393, n.

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claration required by the said Act, or to take upon himself the duties of such office.

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any act which the corporation might previously have lawfully done. Until a bye-law is made, it will be prudent to give notice to the mayor, or to the alderman of the ward in the case of a borough divided into wards, of an intended resignation.

It has been frequently stated, that the mere acceptance of an incompatible office, by whomsoever the appointment or election to it might be made, would forthwith effect an absolute avoidance of the former office. *Rex* v. *Godwin*, 1 Doug. 398; Com. Dig. Officer (B. 6); but this proposition is too general, and cannot be supported in its terms. It is observed by *Parke*, J., in *Rex* v. *Patteson*, 4 B. & Ad. 24, where the cases on this point will be found collected—"that such acceptance does not operate as an *absolute avoidance*, in those cases where a person cannot divest himself of an office by his own mere act, but requires the concurrence of another authority to his resignation or amotion, *unless that authority is privy and consenting to the second appointment*:" though there is no doubt that the acceptance of such an office may afford ground of amotion.

The conclusion to be derived from the cases is:—"That the acceptance of the second office will not absolutely avoid the first, unless it be made by or with the privity of that authority which has the power to accept the surrender of the first, or to amove from it." See *Rex* v. *Patteson*, 4 B. & Ad. 25; see also *Gage* v. *Peacock*, Noy, 12; *Verrior* v. *Mayor of Sandwich*, 2 Keb. 92; *Rex* v. *Trelawny*, 3 Burr. 1615; *Milward* v. *Thatcher*, 2 T. R. 87; *Rex* v. *Pateman*, 2 T. R. 777; *Arkwright* v. *Cantrell*, 7 A. & E. 565; *Staniland* v. *Hopkins*, 9 M. & W. 178; see also Com. Dig. Officer (B. 5); and 1 Kyd on Corporations, 374. In *Staniland* v. *Hopkins*, the office of councillor was held to be avoided by acceptance from the council of the office of clerk to a court of requests, under a local Act and s. 72 of the 5 & 6 Will. 4, c. 76.

The acceptance of an incompatible office, even under a void election, avoids the former office; and the party is not,

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Reservation of exemption from tolls enjoyed by persons in virtue of other than corporate rights.

* 5 & 6 Will. 4, c. 76, s. 2.

IX. And be it enacted, that nothing contained in the said Act for regulating corporations* shall be construed to alter or affect the right of any person claiming discharge or exemption from tolls levied in whole or in part by or to the use of any body corporate by virtue of any title to such discharge or exemption other than as an inhabitant of any borough, or as a citizen, freeman, or burgess, or as a member by any name whatsoever of any body corporate named in the said schedules, or as the widow or kindred of any such inhabitant, citizen, freeman, burgess, or member of such body corporate.

Accounts of corporations to be transmitted to Secretary of State, and abstracts laid before Parliament.

X. And be it enacted, that the council of each borough, town, or city named in the said schedules, or in which a body corporate of mayor, aldermen, and burgesses may be created under the provisions of the said Act(1), shall, before the first day of March in each year, transmit to one of his Majesty's principal Secretaries of State a statement of all monies received and expended on account of the mayor, aldermen, and burgesses of that borough, town, or city within the year preceding, which statement shall be prepared in such form and manner as the Secretary of State shall direct, and such accounts shall refer to the year (2) ended upon the first of

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by being ousted from the incompatible office on a quo warranto, restored to his original office. *Rex* v. *Hughes*, 5 B. & C. 886; see also *Rex* v. *Bond*, 6 D. & R. 333.

(1) See 5 & 6 Will. 4, c. 76, s. 141, and also 7 Will. 4 & 1 Vict. c. 78, s. 49, post.

(2) By 7 Will. 4 & 1 Vict. c. 78, s. 43, every such account

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January of the year in which such account is hereby required to be so transmitted; and an abstract of such statements and accounts, under general heads, shall be laid before both Houses of Parliament during their sitting in the same year in which they are hereby required to be transmitted as aforesaid.

MUNICIPAL ADMINISTRATION OF JUSTICE ACT.

6 & 7 WILL. 4, CAP. 105.

An Act for the better Administration of Justice in certain Boroughs.

[20*th August*, 1836.]

5 & 6 Will. 4, c. 76.

WHEREAS, by reason of certain defects in an Act passed in the last session of Parliament, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, the administration of civil and criminal justice is injuriously hindered and delayed in certain boroughs named in the schedules (A.) and (B.) to the said Act annexed; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the

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shall be made up to the last period of audit of the said receipt and expenditure, instead of to the 1st of January as here provided.

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Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the justices of the peace of any county, riding, parts, or division of a county, shall have the same powers of contracting with the council of any borough, town, or city named in the said schedules in which it shall have been made to appear to the satisfaction of one of his Majesty's principal Secretaries of State that there is a gaol or house of correction fit for the confinement of prisoners, for the conveyance to and support and maintenance in such gaol or house of correction of prisoners committed thereto by any justice or justices of such county, ridings, parts, or division of a county, which the council of any other borough have with respect to prisoners committed to such gaol or house of correction from such last-mentioned borough; and all the provisions of an Act made in the fifth year of his late Majesty, intituled *An Act for amending an Act of the last Session of Parliament relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales*, shall extend, or as nearly as may be, to all such contracts; and in case his Majesty shall have granted to the borough, town, or city in which such gaol or house of correction shall be situated a separate court of quarter sessions of the peace, such offenders may be tried and sentenced by such Court for all offences of which the Court has cognisance, and punished accordingly, and all the provisions of the last-recited Act made in the fifth year of his late Majesty shall extend as nearly as may be to the trial and punishment of

County justices may contract with council of a borough in which there is a sufficient gaol for the committal of county prisoners thereto.

5 Geo. 4, c. 85.

If there is a separate court of quarter sessions in the borough, such offenders may be tried there.

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such offenders, and to all Acts necessary for such trial or consequent thereon (1).

Power to try prisoners at borough sessions, although committed for trial under contract to a county prison more than two miles from the borough.

II. And whereas it is expedient to enlarge the powers (2) given to the councils of the boroughs named in the said Act for the regulation of municipal corporations, in which a separate court of quarter sessions of the peace shall be holden, of contracting with the justices of the peace having authority or jurisdiction in and over any gaol or house of correction of the county, riding, or division wherein such borough is situated or whereunto it is adjacent, for the conveyance, support, and maintenance in such last-mentioned gaol or house of correction of prisoners committed thereto from such borough; Be it enacted, that it shall be lawful to try any such prisoner at the borough court of quarter sessions of the peace, and for the proper officer of such borough to direct the removal of such prisoner for trial, and to do all other acts necessary for such trial or consequent thereon, notwithstanding that the gaol or house of correction so receiving under contract a prisoner committed for trial may be situate more than two miles from the usual place of trial of such borough (3).

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(1) See post, 5 & 6 Vict. c. 53, for the establishment of *district courts* and prisons, and the power of justices of boroughs to commit offenders to such prisons, and of recorders to hold courts of sessions for trial of offenders within such districts. See also 5 & 6 Vict. c. 98, ss. 14 *et seq.*; and 11 & 12 Vict. c. 39, post.

(2) See 5 & 6 Will. 4, c. 76, s. 114, p. 209.

(3) See 5 Geo. 4, c. 85, s. 1. See also the 2 & 3 Vict. c.

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III. And whereas it is by the said recited Act enacted, that no recorder or person assigned to keep the peace within any such borough shall be capable of acting as recorder or justice of the peace within such borough until he shall have taken the oaths provided to be taken by justices of the peace, except the oath as to qualification by estate; Be it enacted, that all oaths so required to be taken by any such recorder or person assigned to keep the peace may be taken before the mayor or any two aldermen or councillors of the said borough, without suing out or obtaining any special dedimus or other commission or authority for administering such oaths (9).

Oaths required to be taken by recorder, &c., may be taken before the mayor or two aldermen or councillors.

IV. And whereas by the said Act it is provided that the mayor of every borough named in the said schedules (A.) and (B.) shall continue in his office for one whole year*; Be it enacted, that the mayor of every such borough shall continue in office for one whole year, and until his successor shall have accepted the office of mayor, and shall have made and subscribed the declaration required in that behalf.

Mayor to hold over until acceptance of office by his successor.

* 5 & 6 Will. 4, c. 76, s. 49.

V. And be it enacted, that so much of the said Act as provides for the appointment of any sheriff (1) on the first day of November in this or any following year is hereby repealed; and that every such appointment of sheriff shall be on the ninth day of

Sheriff to be elected on 9th November instead of 1st November.

56, extending the provisions of the 4 Geo. 4, c. 64, and 5 Geo. 4, c. 85, to all gaols, &c.

(9) See 5 & 6 Will. 4, c. 76, s. 104, ante, p. 195.

(1) See s. 61 of 5 & 6 Will. 4, c. 76, ante, p. 107.

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November, at the quarterly meeting of the council (2), and immediately after the election of mayor, and in all other respects according to the provisions of the said Act; and every sheriff appointed under the provisions of the said Act or of this Act shall hold his office until the appointment of his successor.

Coroner may appoint a deputy in case of illness or unavoidable absence.

VI. And be it enacted, that in case of illness or unavoidable absence, the coroner for the time being of any borough, town, or city named in the said Act shall be empowered and he is hereby required, by writing under his hand and seal, to appoint a fit person, being a barrister at law or an attorney of one of his Majesty's Courts at Westminster, and not being an alderman or councillor of such borough, town, or city, to act for him as deputy coroner during the illness or unavoidable absence of such coroner, but no longer or otherwise: Provided always, that the mayor or two justices of such borough, town, or city shall on each occasion certify under their hands and seals the necessity for the appointment of such deputy coroner; and such certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by such deputy coroner; and the particulars of every inquest holden before any deputy coroner shall be included in the return to be made by the coroner to the Secretary of State, as provided by the said Act (1).

Proviso.

Particulars of inquests, &c.

(2) This day is fixed for the first quarterly meeting in each year, by 5 & 6 Will. 4, c. 76, s. 69, ante, p. 129.

(1) See 5 & 6 Will. 4, c. 76, ss. 62, 63, 64, as to the coro-

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VII. And be it enacted, that in every case in which before the passing of the said Act a court of requests or of conscience for the recovery of small debts was established in any borough, town, city, or county of a town or city, the boundary whereof shall have been enlarged by the said Act, the jurisdiction of such court shall be extended to such enlarged boundary: Provided nevertheless, that nothing herein contained shall extend to give such Court cognisance of any suit which before the passing of this Act could not be brought therein, and could be brought in some other court of conscience or requests (1). Extension of jurisdiction of courts of requests.

VIII. And be it enacted, that every thing (2) pro- Powers of local Acts

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ner. As to the general authority to appoint a deputy, see p. 194. This power is extended to *county* coroners by 6 & 7 Vict. c. 83. It is a sufficient cause for the appointment of a deputy, that the coroner was engaged in holding another inquest. *Reg.* v. *Perkin*, 7 Q. B. 165. If the jury are sworn and the proceedings begin before the deputy, he should finish them, though the coroner may be present in the course of holding the inquest. *Id.* The inquisition is properly signed in the name of the principal coroner "by A. B. his deputy," and is properly described as taken before the principal coroner. *Id.*

(1) See now, as to courts of requests, the Act for the establishment of *county courts*, 9 & 10 Vict. c. 95.

(2) By this section it was intended to give additional powers to the town council, and not to repeal or alter any of the powers already conferred by 5 & 6 Will. 4, c. 76. See *Staniland* v. *Hopkins*, 9 M. & W. 178.

See ante, pp. 136. 138, ss. 72, 73 of the Municipal Corporation Act, and the notes to those sections.

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heretofore exercised by justices in quarter sessions, and not within the powers of the recorder, vested in the council.

vided under any local Act of Parliament to be done exclusively by any particular or limited number, class, or description of the members of any body corporate named in the schedules (A.) and (B.) annexed to the said Act for regulating corporations, the continuance of which is not inconsistent with the provisions of the said Act, and also everything provided in any such local Acts to be done by the justices, or by some particular class or description of members of such body corporate, being justices, at some court of general or quarter sessions assembled, and which does not relate to the business of a court of criminal or civil judicature (3), shall and may be done by the council at some quarterly meeting of the council, or by some committee of the council, or any three or more of such committee to be appointed at a quarterly meeting of the council: Provided also, that everything herein authorised to be done at a quarterly meeting of the council may be done at a meeting of the council to be specially summoned for that purpose as soon as may be after the passing of this Act: Provided also, that no recorder (4) by virtue of his office shall have

Proviso—no recorder to

(3) Where, by a local Act, a court of requests was established at Bristol, and certain fees were to be paid to the assessor, &c. of such court, with power for the justices of the peace for the city at quarter sessions to reduce them, and the town council, professing to act under this section, reduced the fees of the assessor and clerk; it was held, that the town council had no authority to do so, the regulation of such fees being clearly a matter relating to the "*business of a court of civil judicature.*" *Palmer* v. *Powell*, 6 M. & W. 627.

(4) See ante, p. 195, 5 & 6 Will. 4, c. 76, s. 105, and the notes to that section.

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power to allow, apportion, make, or levy, or do any act whatsoever with relation to the allowance, apportionment, making, or levying of any rate whatsoever.

have power to make any rate.

IX. And whereas doubts have arisen as to the provisions of the said Act for regulating corporations respecting judges in borough courts of record for the trial of civil actions not regulated by the provisions of any local Act of Parliament, or in which at the time of passing the said Act a barrister of five years standing did not act as judge or assessor(1); Be it therefore enacted and declared, that from and after the passing of this Act the recorder, and in the absence of the recorder such person, being a barrister of not less than five years standing, as shall be appointed by the recorder under his hand and seal to hold the said court, shall be the judge of such court, and shall hold the said court at such times(2) as the said recorder in his discretion may think fit, or as his Majesty shall think fit to direct; and every recorder or person so appointed to hold such court shall be entitled to have such salary paid

Provision for holding courts of record.

(1) This section was passed in consequence of the doubts raised as to the construction of s. 118 of 5 & 6 Will. 4, c. 76, ante, p. 217.

See post, 7 Will. 4 & 1 Vict. c. 78, ss. 32, 33, 34, 35, making further provisions as to courts of record in boroughs.

(2) But it is provided by 2 & 3 Vict. c. 27, s. 2, that every such court shall be holden for the trial of issues of fact and of law four times at the least in each year, and with no greater interval between the holding of any two successive courts than four months.

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to him out of the borough fund as the council shall fix by some bye-law to be made in that behalf:

Proviso as to rules.

Provided also, that all rules(3) hereafter to be made for regulating the practice of such courts shall be approved and signed by the recorder of such borough, if there shall be a recorder, before the same shall be submitted to the judges of the superior Courts for allowance and confirmation by them according to the provisions of said recited Act.

Repeal of part of s. 134 of 5 & 6 Will. 4, c. 76, as to courts of quarter sessions for the Cinque Ports, and new provision made.

X. And be it enacted, that so much of the said Act as provides that the courts of quarter sessions of the peace of the towns and ports of Hastings, Sandwich, Dover, and Hythe, and of the ancient town of Rye, or of such of the said towns and ports and ancient town to which his Majesty shall grant a separate court of quarter sessions of the peace, shall have jurisdiction over offences and matters committed, arising, and happening within the towns named in the schedule to the said Act, which are ancient corporate members and liberties of the said towns and ports and ancient town respectively, and to which his Majesty shall not grant a separate court of quarter sessions of the peace, and also provides

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(3) See post, 2 & 3 Vict. c. 27, s. 1, by which it is provided, "that every judge" of a court of record for the trial of civil actions in any borough mentioned in schedules (A.) and (B.) of the Municipal Corporation Act, shall have authority to make, alter, and revoke the rules for appointing the times for holding such court, and for regulating the proceedings and practice &c. in each court. See the section at length, post.

See also, in the Appendix, the rules of the court of record in the borough of Portsmouth, as made under the authority of these statutes.

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that any or either of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and ancient town of Rye, to which his Majesty shall not grant a separate court of quarter sessions of the peace, and their or its members and liberties, shall, for all purposes relating to the jurisdiction of courts of quarter sessions of the peace, be respectively within the jurisdiction of the courts of quarter sessions of the peace of the nearest other of the said towns and ports or ancient town to which his Majesty shall grant a separate court of quarter sessions of the peace, is hereby repealed; and it is hereby enacted, that, until other provision shall be made by Parliament in that behalf, courts of general sessions of the peace and gaol delivery shall and may be holden in and for the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and ancient town of Rye, or such of the said towns and ports and ancient town to which his Majesty shall not grant a separate court of quarter sessions of the peace, and for the ancient members and liberties thereof, not being corporate, and also in and for the towns of Deal, Faversham, Folkestone, and Tenterden, or such of the said towns to which his Majesty shall not grant a separate court of quarter sessions of the peace, before the person who at the time of the passing of the said Act was or acted as recorder or steward, or assessor, or by whatsoever other name he was called, of the said towns and ports, ancient town and towns respectively; or in case of his death, or resignation, or absence, or in case there was no such recorder, or steward, or assessor, then before any barrister at law, of not less than five years standing, whom his Majesty shall appoint to hold

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the same, in the same manner in other respects, and with the same powers and authorities, as before the passing of the said Act, except as regards the trial of capital felonies; and so long as such courts of general sessions of the peace and gaol delivery shall be holden, the offices of clerk of the peace and coroner shall be holden and exercised by the same persons, or by the same officers of such of the said towns and ports, ancient town and towns respectively, to which his Majesty shall not grant a separate court of quarter sessions, by whom or by which the same were holden at the time of the passing of the said Act, or in case of their death or resignation, or there being no longer such officers, then by such persons as the councils of such towns and ports, ancient town and towns respectively, shall appoint to hold the same, with the same powers and authorities as before the passing of the said Act; and the non-corporate members and liberties of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and the said ancient town of Rye, shall and may be chargeable and charged by the courts of general or quarter sessions of the peace holden for the same respectively, with a due proportion of the expenses of such towns and ports and ancient town respectively, and the non-corporate members and liberties thereof, to the payment of which expenses rates in the nature of county rates are applicable, and the same shall and may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the said Act; and a due proportion of inhabitant householders to serve as grand jurors, and jurors at the courts of general or quarter sessions of the peace of the said towns and

Non-corporate members, &c. to be charged.

Jurors.

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ports of Hastings, Sandwich, Dover, and Hythe, and of the said ancient town of Rye, shall be summoned by the clerks of the peace of the said towns and ports, and ancient town, from the non-corporate members and liberties thereof respectively, and the attendance of such jurors shall be enforced, and their defaults punished in the manner by the said Act directed with respect to jurors in boroughs (1).

Justices acting under commissions granted by virtue of 51 G. 3, c. 36. may exercise all the powers of justices in counties relating to the granting of licenses to victuallers.

XI. And be it enacted, that his Majesty's justices of the peace, acting under the authority of a commission or commissions issued by virtue of an Act passed in the fifty-first year of the reign of his late Majesty King George the Third, intituled *An Act to facilitate the Execution of Justice within the Cinque Ports*, shall and may have and exercise all the jurisdiction, powers and authorities belonging to justices of the peace in counties relating to the granting of licenses or authorities to persons to keep inns, ale-houses, or victualling houses, or to sell exciseable liquors by retail, within any of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and of the ancient town of Rye respectively, which shall not have justices of the peace assigned to them by virtue of the said Act passed in the last session of Parliament, and the non-corporate members and liberties thereof, and also within any of the said towns of Deal, Faversham, Folkestone, and Tenterden respectively, which shall not have justices of the peace assigned to them by virtue of the same Act.

(1) See ante, 5 & 6 Will. 4, c. 76, s. 121, p. 221.

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His Majesty may appoint the vice-chancellor of Cambridge University to be a justice of the borough.

XII. And whereas doubts have been entertained whether, under the provisions of the said recited Act, it may be lawful for his Majesty from time to time to constitute and appoint the vice-chancellor of the University of Cambridge for the time being a justice of the peace in and for the town and borough of Cambridge; Be it therefore enacted, that it shall be lawful for his Majesty, his heirs and successors, from time to time, if his Majesty shall so think fit, in and by his commission of the peace for the said town and borough, to constitute and appoint the vice-chancellor of the University for the time being a justice of the peace for the said town and borough, any thing in the said recited Act, or in this Act, to the contrary notwithstanding: Provided always, that no vice-chancellor of the said University, by reason of his being named in any commission of the peace for the said town and borough, shall thereby have, as touching the grant of licenses to alehouses, any greater authority as justice of the peace than any other justice of the peace named in any such commission; but that nothing in this Act shall be construed to alter or in any way to affect the rights and privileges which the vice-chancellor by virtue of his office now lawfully has or enjoys, or might have lawfully had and enjoyed if the vice-chancellor had not been appointed under the provisions of this Act a justice of the peace for the said town and borough (1).

Proviso as to vice-chancellor's power of licensing alehouses.

(1) See ante, 5 & 6 Will. 4, c. 76, s. 137, p. 239, saving the rights of the Universities.

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BOROUGH QUARTER SESSIONS ACT.

7 WILL. 4 & 1 VICT. CAP. 19.

An Act to empower the Recorder or other Person presiding in Quarter Sessions in Corporate Cities and Towns, and Justices of the Peace for Counties, Ridings, or Divisions, to divide their respective Courts in certain Cases.

[30*th June*, 1837.]

WHEREAS in large corporate cities and towns the quarter sessions of the peace may sometimes last beyond three days, and where such is the case considerable inconvenience and increased expense will result from the detention of jurors and witnesses, and the unavoidable attendance of a large portion of the municipal police; And whereas for the remedying thereof it is expedient that a similar power of forming a second court to that which is vested in the justices at the general quarter sessions for counties, by virtue of an Act passed in the fifty-ninth year of his late Majesty King George the Third, intituled *An Act to empower Magistrates to divide the Court of Quarter Sessions*, should be given to the recorder or other person presiding in the court of quarter sessions of corporate cities or towns; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that whenever it shall appear to such

59 Geo. 3, c. 28.

Power to the recorder or

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other person presiding to form a second court, and appoint a barrister to preside therein.

recorder or other person presiding as aforesaid that the said quarter sessions are likely to last more than three days, including the day of assembling, it shall and may be lawful for such recorder or other person so presiding, at his discretion, but subject to the provisions hereinafter contained, to order a second court to be formed, and to appoint by writing under his hand and seal a barrister at law, of not less than five years' standing, to preside, and try such felonies and misdemeanors as shall be referred to him therein, whilst the said recorder or other person is sitting in such quarter sessions; and for the effectual execution of the powers of this Act, such recorder or other person so presiding shall be empowered in such case to call upon the clerk of the peace, and such clerk of the peace is in such case hereby authorised and required to appoint an assistant, and such recorder or other person shall himself appoint an additional crier for such second court; and such barrister shall be styled "Assistant Barrister," and shall exercise, for the time being, whilst the said recorder or other person is so sitting as aforesaid, the same powers as are exercised by the said recorder or other person presiding as aforesaid, and subject to the same rules and regulations; and the proceedings so had by and before such assistant barrister shall be as good and effectual in the case to all intents and purposes as if the same were had before the said recorder or other person so presiding as aforesaid, and shall be enrolled and recorded accordingly: Provided always, that if at any time during the sitting of such second court the recorder or other person shall be of opinion that it is no longer required, he may direct the assistant barrister, at a proper opportunity, to adjourn the

Clerk of the peace in such cases to appoint an assistant.

Recorder may direct such court to be adjourned.

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same: Provided also, that no such recorder or other person so presiding as aforesaid shall at any time exercise the powers and discretion given by this Act, unless it shall have been theretofore and before each such quarter sessions certified to him under the hand or hands of the mayor or of two of the aldermen of such corporate city or town that the council of such corporate city or town have resolved that it will be expedient and for the benefit of the inhabitants thereof that the same should be exercised, nor unless the name of the barrister proposed to be appointed, in case such recorder or other person shall in the exercise of such discretion deem such appointment necessary, shall have at some previous time been transmitted to and approved of by one of his Majesty's principal Secretaries of State as a fit and proper person to be from time to time so appointed (1).

Proceedings preliminary to the exercise of the powers hereby given.

II. And be it further enacted, that such assistant barrister shall be entitled to a remuneration of ten guineas *per diem* for each day that he shall so preside as aforesaid; and such assistant clerk of the peace shall be entitled to a remuneration of two guineas *per diem*, and such additional crier shall be entitled to a remuneration of half-a-guinea *per diem*, for such time as they shall execute their respective offices in such second court; and such remuneration shall be paid by the treasurer of the borough out of the bo-

Remuneration to officers of said second court.

(1) See ante, 5 & 6 Will. 4, c. 76, s. 105, p. 195, as to the power and jurisdiction of the recorder. As to the appointment of a *deputy-recorder*, see now 6 & 7 Vict. c. 89, s. 8, post.

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rough fund; and the recorder or other person presiding shall grant a certificate to such assistant barrister, such assistant clerk of the peace, and such additional crier respectively, stating the number of days that each shall have executed his several office, and the amount that he is entitled to claim; and such certificate shall be a sufficient authority to the treasurer of the borough to pay the same, and shall be retained by him as a voucher for such payment: Provided always, that such assistant barrister, assistant clerk of the peace, or additional crier, shall not in any case be entitled to claim remuneration for more than two days.

Appointments not subject to duty.

III. And be it further enacted, that the appointments and certificates authorised and directed by this Act shall not be subject to any stamp duty or other tax whatsoever.

Two or more justices at adjourned quarter sessions may sit apart for despatch of business.

IV. And whereas doubts have arisen whether it is lawful for the justices assembled at any adjourned quarter sessions of the peace held for any county, riding, or division to carry into effect the provisions of the Act passed in the fifty-ninth year of his late Majesty King George the Third as aforesaid; Be it therefore enacted, that from and after the passing of this Act it shall be lawful for the justices assembled at any adjourned quarter sessions of the peace for any county, riding, or division, on the first day that they shall assemble, should the state of the business be such at such adjourned quarter sessions as is likely to occupy more than three days, including the day of their being so assembled, to appoint two or more justices to sit apart from themselves in some

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place in or near the court, there to hear and determine such business as shall be referred to them whilst others of the justices are at the same time proceeding in the despatch of the other business of the same court; and the proceedings so had by and before such two or more justices so sitting apart shall be as good and effectual in the law to all intents and purposes as if the same were had before the court assembled and sitting as usual in its ordinary place of sitting, and shall be enrolled and recorded accordingly.

Act may be altered this session.

V. And be it further enacted, that this Act may be amended, altered, or repealed by any other Act to be passed in this present session.

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MUNICIPAL ACT AMENDMENT ACT.

7 WILL. 4 & 1 VICT. CAP. 78.

An Act to amend an Act for the Regulation of Municipal Corporations in England and Wales.

[17*th July*, 1837].

WHEREAS an Act was passed in the fifth and sixth years of the reign of his present Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, providing among other things for the election of certain officers in manner and form therein declared, but such elections have not in all cases been duly made according to the provisions of the said Act; And whereas doubts are entertained by and before whom the meetings for such elections can now be convened and holden for the purpose of supplying such deficiencies: And whereas the elections of corporate officers and others are liable to be questioned by reason of any defect that may be in the title of the presiding officer, before whom the election may have been had, notwithstanding that the election may have been otherwise good in all respects: For remedy thereof be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that no election of any person into any corporate office which shall take place after the passing

5 & 6 WILL. 4, c. 76.

Election not to be questioned for title of pre-

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of this Act shall be liable to be questioned by reason of any defect in the title or want of title of the person before whom such election may have been had, provided that the person before whom such election shall be had shall be then in the actual possession of or acting in the office giving the right to preside at such election (1); and, subject and without prejudice to the provisions for discontinuing proceedings hereinafter contained *, all elections into any corporate office since the twenty-fifth day of December in the year one thousand eight hundred and thirty-five, in any borough named in either of the schedules (A.) and (B.) annexed to the said Act

siding officers;

* § 20.

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(1) By this clause it is provided, that no election of any person into any corporate office shall be questioned for want of title in the presiding officer, provided such officer shall be in the actual possession of, or acting in, the office giving the right to preside at such election. See ante, 5 & 6 Will. 4, c. 76, s. 53, p. 90. Where however a person, such as a freeman, &c., has had an *inchoate right* to be admitted to an office, it has always been held that the admission or title of such party cannot be impeached on the ground of his having been sworn in before officers who were so *de facto* but not *de jure*. See *Rex* v. *Slythe*, 6 B. & C. 246, where *Abbott*, C. J., observes—"I take it to be clear, that where a title has been conferred, that is defeated by shewing that the party conferring it had no right to do so. But the title in question was not conferred by the presiding officers: their duty was merely to inquire into the fact of the existence of the alleged inchoate right." In *Rex* v. *Corporation of Shrewsbury*, Cas. temp. Hardw. 150, it was admitted that acts which officers are compellable to do are valid when done by officers *de facto*. See 5 & 6 Will. 4, c. 76, s. 50, n. (1), ante, p. 80.

See 6 & 7 Vict. c. 98, s. 1, as to questioning the title of the mayor on the ground of informality in his election as alderman or councillor, post.

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for regulating corporations, and all acts duly done in right of their office since the said twenty-fifth day of December by the persons chosen at any such election, and all acts duly done by any person with reference to any such election, shall be good to all intents and purposes, notwithstanding any defect in the title or want of title in the person so presiding, arising from the provisions of the said Act or of any former charter or any local custom not having been duly complied with, and notwithstanding that there may not have been at the time of the passing of the said Act any such body corporate as is named in the schedule (A.) or (B.) of the said Act in conjunction with the name of the borough in which such election may have been had, or any such officer as is charged by the said Act with the execution of such duties: Provided that the person or persons before whom or by whose authority any such election may have been had, or by whom any summons shall have been issued, or list made out or received, or other act done for holding or with reference to any such election, shall have *bonâ fide* taken upon himself the duties of the office giving right to preside at such election, or issue such summons, or make out or receive such list, or do such act as aforesaid: Provided nevertheless, that nothing hereinbefore contained shall prevent any such election or act done by any person from being questioned and set aside by reason of any fraud or any irregularity or defect other than is hereinbefore specified: Provided also, that nothing in this Act contained shall extend to invalidate any payment *bonâ fide* made, or to invalidate or render valid any notice to quit given before the passing of this Act, or render liable to any penalty or punish-

provided that the person shall have taken upon himself the office.

Proviso.

Proviso.

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ment any person who would not have been liable to such penalty or punishment in case this Act had not been made.

All elections duly made since 25th December good, though the whole number of aldermen not elected.

II. And be it enacted, that all elections duly made or other acts duly done since the said twenty-fifth day of December, at any meeting of the council or councillors of any borough named in either of the schedules of the said Act, by a majority of the members of the council or councillors present at such meeting, the whole number present not being less than one-third part of the number of the whole council, shall be good notwithstanding that the whole or due number of aldermen may not have been then elected(1): Provided always, that nothing in this

Nothing herein to af-

(1) A defect in the first election of aldermen for a borough under the Municipal Corporation Act, by reason of which the proper number was not elected, is cured by this section. *Reg.* v. *Roberts*, 7 A. & E. 433.

Where a defect of title has been so cured, after proceedings in *quo warranto* commenced, such proceedings are not actually discontinued by s. 20 of this Act, but a right immediately accrues to apply for a discontinuance on payment of costs by the defendant to the prosecutor. Either party may make the application. *Reg.* v. *Roberts*, 7 A. & E. 433; see post, s. 20. Where the prosecutor did not apply immediately on the passing of the Act, and further costs were incurred, the Court allowed him to discontinue, but with costs only down to the passing of the Act. *Reg.* v. *Roberts*, 7 A. & E. 441.

Where, previously to the passing of this Act, a rule *nisi* for a *quo warranto* information had been obtained against a party on the ground that the person presiding at the election as mayor had no title; and the defendant had not paid the costs up to the time of the passing of this Act; the Court made the rule *absolute*. *Reg.* v. *Jones*, 7 A. & E. 430; in

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fect any person in actions to try the right to office of profit.

Act contained shall extend to affect the right of any person to prove the validity or invalidity of any election or act had or done before the passing of this Act, and hereby made good or valid, in any action already brought or hereafter to be brought to try the right to any office of profit, or to recover the profits or receipts thereof; and every such action in which it may be material to either party to prove the validity or invalidity of any such election or act shall be tried and decided to all intents and purposes as if this Act had not passed; provided that such action shall be brought within twelve calendar months after the passing of this Act.

Elections before the election of assessors to be valid.

III. And be it enacted, that all elections had before the passing of this Act, or to be had under this Act, in any borough named in either of the said schedules, at any time before the election of assessors for such borough, shall be as good as if had before the mayor and assessors jointly (1).

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which case it was also held, that this section is subject, so far as it relates to proceedings commenced before the passing of this Act, to section 20 (post, p. 342), which provides for the discontinuance of such proceedings *only on payment of costs*. See post, in note to the same section, *Reg.* v. *Hooker*, 9 A. & E. 680.

Where a *greater* number had been elected than is authorised by the 5 & 6 Will. 4, c. 76, the council were, by 6 & 7 Vict. c. 89, s. 2, directed to declare, on the 9th Nov. 1843, which of the persons so elected should be aldermen; and it was provided that the persons *not* so named should forthwith cease to be aldermen.

(1) See 5 & 6 Will. 4, c. 76, s. 18, and note (1) thereto, ante, p. 36.

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IV. And whereas by the said Act it is provided(2), that in every case in which there shall be a division into wards of any borough the assessors who shall hold the court for revising the burgess lists with the mayor shall be the assessors of the mayor's ward; and it may be, in case the mayor be chosen from among the aldermen, that there is no mayor's ward in such borough; Be it enacted, that so much of the said Act as provides that the assessors who shall hold the court for revising the burgess lists with the mayor shall be the assessors of the mayor's ward is hereby repealed; and in every borough divided into wards two assessors shall be chosen on the twenty-first day after the passing of this Act, and in every subsequent year on the first day of March, or on the following day if that day be on a Sunday, to hold the court for revising the burgess lists with the mayor, in like manner as is provided in the said Act(3) concerning the election of two auditors of such borough(4); and no burgess list which shall have been revised before the passing of this Act by the mayor alone, or by the mayor assisted by any other person or persons, shall be taken to have been ill revised by reason of the mayor not having been assisted by the assessors of the

5 & 6 Will. 4, c. 76, s. 43, in part repealed.

Two revising assessors to be chosen in like manner as the auditors are.

(2) See section 43 of the Municipal Corporation Act, and *Rex* v. *Parry*, 6 A. & E. 810, in note (4) to that section, ante, p. 71.

(3) See 5 & 6 Will. 4, c. 76, s. 37, ante, p. 68.

(4) An election of two assessors to hold the Court for revising the lists with the mayor may be had under this section, though there had been an omission to elect assessors *for the borough*. *Reg.* v. *Mayor &c. of Weymouth and Melcombe Regis*, 7 Q. B. 46.

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mayor's ward, but every such revised list, if otherwise revised according to the provisions of the said Act, shall be good, and the fair and true copy thereof, made according to the provisions of the said Act, shall be the burgess roll for the present year in that borough.

Burgess roll not to be questioned for the want of title of the mayor or assessors.

V. And be it enacted, that after the passing of this Act no burgess roll shall be liable to be questioned by reason of any defect of title or want of title of the mayor or assessors by whom the same shall have been revised, or any or either of them, provided that he or they shall have been in the actual possession and exercise of the office of mayor or assessor, as the case may be(1).

Burgess roll to be in force until revision of new burgess roll.

VI. And be it enacted, that in every borough in which by reason of any neglect or informality a new burgess roll of the said borough shall not have been duly made *in any year* within the time directed by the said Act(2), the burgess roll which was in force before the time appointed for the revision shall continue in force until such new burgess roll shall have been duly made(3).

(1) See the proviso at the end of s. 53 of 5 & 6 Will. 4, c. 76, ante, p. 93.

(2) See 5 & 6 Will. 4, c. 76, ss. 15 to 23 inclusive.

(3) This section has been considered and acted on, as being *prospective;* the next section is expressly retrospective. Many of the sections of this statute are *retrospective only*, having been passed expressly to supply deficiencies, or to remedy errors not likely to occur again. But it will be observed, in looking at the wording of this and other sections, that,

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Corporations not dissolved by neglect to make new burgess roll,

VII. And be it enacted, that no body corporate named in the schedules of the said Act for regulating corporations, in which no new burgess roll was made in the month of October last, shall therefore be taken to have been dissolved, but every such body corporate shall have and continue to have perpetual succession, and all the rights, powers, privileges, and liabilities which it would have had, if the new burgess roll had been duly made; and in any case in which no councillors shall have been elected on the first day of last November to supply the place of those who were then to go out of office according to the provisions of the said Act, the councillors who were to continue in office shall so continue in like manner and for the same time as if such new election had been duly made.

As to reckoning a former person's rating and occupancy as part of a subsequent occupier's.

VIII. And be it enacted, that in every case in which under the provisions of the said Act for regulating corporations, any person shall be entitled to reckon the rating and occupancy of any house, warehouse, counting-house, or shop in any borough by any other person as part of his own rating and occupancy, it shall not be necessary, in support of the title of such person to be enrolled on the burgess roll, to prove that he was an inhabitant householder within the said borough, or within seven miles of the said borough, or that he was an occupant or rated within the same before the title to such house

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on the point of their being prospective as well as retrospective, they are not expressed as clearly as they might have been.

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or other property as aforesaid shall have devolved upon him(1).

Rating in name of former occupier sufficient.

IX. And be it further enacted, that the rating in the name of the person previously occupying shall be considered a sufficient rating of the person so entitled until a new rate shall be made subsequent to such devolution of title as aforesaid(2).

Provision for certain cases in which there has been equality of votes.

X. And be it enacted, that in every borough named in the said schedules in which, or in any ward or wards of which, it is doubtful who should have gone out of the council in the month of November last, by reason of the same number of votes having been given for two or more persons, and by reason of the council not having determined who should then go out of office according to the provisions of the said Act for regulating corporations, all the councillors in such borough or ward respecting whose continuance in office any such doubt shall arise shall continue in office for the same time as if they had been elected on the said first day of November now last past; and the council shall determine which of them shall go out of office on the first day of November now next ensuing; and if the doubt shall extend to those who should have gone out of office on the first day of November now next ensuing, the council shall also determine which of them shall go out of office on the first of November

(1) See ante, p. 28, the 12th section of the Municipal Corporation Act, and the note thereto.

(2) See ante, section 12 of the Municipal Corporation Act, p. 28.

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in the year one thousand eight hundred and thirty-eight(9).

Repeal of provision relating to vacancies in the council.

XI. And be it enacted, that so much of the said Act for regulating corporations as provides that no new election of councillors shall be made by reason of any extraordinary vacancy in the office of councillor unless the number of councillors remaining after such vacancy shall not exceed two-thirds of the whole number of the council of the borough, is hereby repealed(1); and that every election of a councillor to supply any such extraordinary vacancy, either alone or together with other councillors(2),

Provision in lieu thereof.

(9) In *Reg.* v. *Alderson*, 1 Q. B. 878, 1 G. & D. 429, it was held that this section did not apply to a case where the councillors of a borough had not, "immediately after the first election of aldermen," appointed who should go out in 1838, as required by s. 25 of 5 & 6 Will. 4, c. 76. But see now 6 & 7 Vict. c. 89, s. 3. which provides that in such case, on 9th Nov. 1843, the council at the quarterly meeting should declare who should be the *aldermen* to go out of office on 9th Nov. 1844.

(1) See 5 & 6 Will. 4, c. 76, s. 47, ante, p. 74.

(2) It will be observed that this portion of the section is retrospective; the latter portion of the section appears to be prospective, providing for the case where two or three extraordinary vacancies are filled up at the same election. The 47th section of the Municipal Corporation Act merely provides, that a person elected to fill an extraordinary vacancy shall hold his office until the time at which the person, in room of whom he might be elected, would have gone out of office. Great difficulty and inconvenience were experienced, when there were two or more extraordinary vacancies to be filled at the same election, in ascertaining which of the parties was to go out of office first. This new provision, however,

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which shall have been had on the first day of November last, shall be valid, although the number of councillors did then exceed two-thirds of the whole number of the council, and although such vacancy may have happened more than ten days previously to the said first day of November last, if in other respects such election shall have been duly had according to the provisions for the annual election of councillors contained in the said Act for regulating corporations; and the councillor elected by the smallest number of votes at such election, if elected with other councillors, shall be the councillor elected to supply such extraordinary vacancy as aforesaid;

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removes the difficulty, by declaring that the party elected by the smallest number of votes shall be taken to be elected in the room of the person who would first have gone out of office, and so on with respect to the others.

This clause, however, does not in any way authorise an election of persons to supply ordinary and extraordinary vacancies *at the same time*, without a clear distinction being preserved between the two classes of candidates throughout the proceedings: and accordingly, in *Reg.* v. *Rowley*, 3 Q. B. 143, where an election of four councillors had taken place on the 1st of November, three of whom were to supply *ordinary* vacancies and one to supply an *extraordinary* vacancy, but no distinction had been made between them, either in the notice of election, in the voting papers, or in the publishing of the names of the elected, the Court held such election to be irregular and void. *S. C.* in the Exchequer Chamber, 6 Q. B. 668, where it seems to be decided that an election to supply ordinary *and* extraordinary vacancies cannot be held at one time. In *Reg.* v. *Rowley*, *Patteson*, J., observes, that "there is no objection to the votes being all given *on the same paper*, if a proper distinction were made." See ante, p. 76, note (3); also *Reg.* v. *Mayor &c. of Leeds*, 7 A. & E. 963; and *Rex* v. *Mayor &c. of Winchester*, Id. 215.

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And in every case in which more than one such extraordinary vacancy shall be so supplied the councillor elected by the smallest number of votes shall be taken to be elected in the room of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be taken to be elected in the room of him who would regularly have next gone out of office, and so with respect to the other. Where more than one extraordinary vacancy supplied.

XII. And be it enacted, that in every borough named in the said Act, in which, by reason of any failure in complying with the directions of the said Act the full number of councillors or ward assessors hath not been elected according to the true intent and meaning of the said Act, the burgesses of the borough, or of the several wards in which the vacancies may be that ought to be filled up, as the case may be, shall, on the fourteenth day after the passing of this Act, openly assemble and elect the councillors and ward assessors, to be elected in the manner directed in the said Act; and the mayor, or if there shall be no mayor the councillor assessed to the poor to the greatest amount in respect of any messuage, land, tenement, tithe, or other hereditaments of which he is occupier and also owner within such borough, shall preside at such election in the case of a borough not divided into wards, and in the case of a borough divided into wards the councillors elected in each ward shall separately choose the councillor who shall preside at the election of councillors and ward assessors in that ward, or in case a majority of them in any ward cannot agree, then the councillor elected in that ward who is Vacancies among the councillors or ward assessors, how to be supplied.

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assessed to the poor to the greatest amount in respect of any messuage, land, tenement, tithe, or other hereditaments, of which he is occupier and also owner within the borough, shall preside at such election, and shall have in that behalf all the powers given by the said Act to the mayor of the borough in the first election of councillors(1).

Mayor or councillor to convene a meeting of the council to supply vacancies in the office of alderman or mayor.

XIII. And be it enacted, that the mayor of every borough named in the said Act, and in which no alderman or less than the full number of aldermen shall have been elected, or, if there shall be no mayor, the councillor who shall be chosen for that purpose by the greatest number of councillors within the borough, or in case a majority of them shall not be able to agree, then the councillor chosen before the passing of this Act, assessed and being occupier and owner as aforesaid to the greatest amount in the whole borough, shall, within ten days after the vacancies (hereinbefore last mentioned) shall have been filled up, convene a meeting of the council, for the purpose of filling any vacancies in the office of alderman or of mayor, or of mayor and alderman, as the case may be; and at every such meeting such mayor or councillor shall preside, and the council shall proceed to elect the aldermen then to be elected; and immediately after the election of aldermen, if any aldermen are then to be elected, the council shall proceed to elect a mayor, if there shall then be no mayor, and the councillor by whom the meeting was convened shall continue to preside

(1) This and the following section are wholly retrospective.

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at the election of mayor; and in every case of vacancy which may be occasioned among the councillors by reason of any such election of aldermen, and which ought to be filled according to the provisions of the said Act, the mayor shall convene a meeting of burgesses for the purpose of filling such vacancy in the manner provided by the said Act in the case of extraordinary vacancies in the office of councillor: Provided always, that the president of any such meeting of the council holden under the provisions of this Act for the election of a mayor or alderman in any borough in which there shall be no mayor, shall have a second or casting vote in case of an equality of votes.

Proviso for casting vote.

XIV. And be it enacted, that after the passing of this Act the election of aldermen by the council shall be in manner following; that is to say, every member of the council entitled to vote in that election may vote for any number of persons, not exceeding the number of aldermen then to be chosen, by personally delivering at such meeting, to the mayor or chairman of the meeting, a voting paper containing the christian name and surname of the persons for whom he votes, with their respective places of abode and descriptions(1), such paper being previously signed with the name of the member of council voting; and the mayor or chairman of the meeting, as soon as all the voting papers have been delivered

Manner of electing aldermen.

(1) Describing a party as of the place where he daily transacts his business, instead of the place at which he resides, is such a misdescription of the place of his abode as to avoid his election. *Reg.* v. *Deighton*, 5 Q. B. 896.

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to him, shall openly produce and read the same, and immediately afterwards deliver them to the town-clerk, to be kept among the records of the borough; and in case of equality of votes among those entitled to vote, the mayor or chairman shall have a casting vote(2), whether or not he may be entitled to vote in the first instance.

Casting vote.

Auditors and assessors disqualified to be of the council.

XV. And whereas by the said Act for regulating corporations, it is provided, that no burgess shall be eligible to be or be elected an auditor or assessor who shall be of the council; Be it also enacted, that no burgess shall be eligible(1) to be elected

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(2) It was held, in *Reg.* v. *Stanley*, 11 A. & E. 869 and 886, that an outgoing alderman, elected mayor at the quarterly meeting on the 9th of November, and afterwards presiding at the election of councillors, might, under this section, give a *casting vote*, but that he could not give an *original vote;* s. 25 of the Municipal Corporation Act restricting the right given to the mayor under s. 69 of the same Act, when the mayor is an *outgoing alderman*. See ante, p. 46, n. (4). And see now 16 & 17 Vict. c. 79, s. 13, post.

(1) *Quære*, whether notice of disqualification of a person on account of his being an auditor or assessor, must be given at an election, in order that votes given for such person should be thrown away. *Semble*, that the party's being and openly acting as such auditor or assessor, is sufficient *notice* to the electors of the borough. See *Reg.* v. *Hiorns*, 7 A. & E. 960, where the point was raised, but not decided; ante, 5 & 6 Will. 4, c. 76, s. 28, n. (3), p. 50.

All votes given for a candidate after due notice would be thrown away, as in the case of other elections. See *Rex* v. *Hawkins*, 10 East, 211; affirmed in the House of Lords, 2 Dow, 124 : *Rex* v. *Monday*, Cowp. 537. See also the *Belfast case*, F. & F. 601, and cases there cited.

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a member of the council, while holding the office of assessor or elective auditor(2).

In case of illness of alderman at election.

XVI. And be it enacted, that in case of the illness or incapacity to act of any alderman at any election, the mayor shall be empowered to appoint another alderman to act in the room of such alderman during such illness or incapacity(3).

Assessor may appoint a deputy.

XVII. And be it enacted, that every assessor shall be empowered, and he is hereby directed, as soon as conveniently may be after his election, and from time to time as the occasion may arise or to him may seem fit, to appoint under his hand a deputy to act for him in case of his illness or incapacity to act at any election or any revision of the burgess lists; and every such appointment shall be signified by him in writing under his hand to the council, and shall be recorded on the minutes of their proceedings.

Appointment to be signified to the council.

Poll may be closed if an hour has elapsed without a vote being tendered.

XVIII. And be it enacted, that at any election under the provisions of the said Act or of this Act it shall be lawful for the presiding officer to close

(2) The auditors elected under s. 37 of 5 & 6 Will. 4, c. 76, are so termed popularly, in contradistinction to the member of the council named as co-auditor by the mayor, under s. 93 of the same Act.

(3) See 5 & 6 Will. 4, c. 76, s. 43, ante, p. 70. By 16 & 17 Vict. c. 79, s. 10, post, in boroughs where the number of aldermen does not exceed the number of wards, the mayor may appoint for the same purpose a councillor (of a different ward).

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the poll at any time before four of the clock(1), if one hour shall have elapsed during which no vote shall have been tendered for any candidate; provided that no person or persons have within the last hour been prevented from coming to the poll by any riot, violence, or other unlawful means, of which notice shall have been given to the returning officer.

Mayor, aldermen, and councillors under this Act to continue as if elected in due time.

XIX. And be it enacted, that every mayor elected under the provisions of this Act shall continue in office until his successor shall have accepted the office of mayor, and shall have made and subscribed the declaration required in that behalf; and every alderman and councillor elected under the provisions of this Act shall continue in office for the same time as if he had been elected in the month of November last, according to the directions of the said Act for regulating corporations(2).

Proceedings on account of defects cured by this Act to be discontinued.

XX. And be it enacted, that every proceeding commenced before the passing of this Act, and still pending in the Court of King's Bench, against any person upon any ground on which it is herein declared that the validity of the election into any corporate office shall not be questioned, or for the purpose of bringing into question the validity of any election or act, which is herein declared to be good, shall be discontinued immediately(3) upon the pass-

(1) See 5 & 6 Will. 4, c. 76, s. 32, ante, p. 60.

(2) See ante, 5 & 6 Will. 4, c. 76, s. 49, and 6 & 7 Will. 4, c. 105, s. 4.

(3) It was held too late to apply under this section, if the

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ing of this Act, upon payment of the costs incurred up to that time; and the prosecutor or relator shall be entitled to receive from the defendant, in every such proceeding, all such costs, to be taxed as between attorney and client, according to the practice of such court(4).

No advantage to be taken under this Act in actions brought by any corporation.

XXI. And be it further enacted, that no advantage shall be taken of the invalidity of any election which shall be rendered valid by this Act in any action already brought or which may be hereafter brought by any corporation, but such action shall be tried on its merits, as if no such objection could

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proceedings had been allowed to go on to a *decision* after the passing of the Act. *Reg.* v. *Roberts*, 7 A. & E. 433.

But where a prosecutor had not applied immediately on the passing of the Act, and further costs had afterwards been incurred, on an application before the case was finally decided, the Court allowed him to discontinue, but with costs only down to the passing of the Act. *Reg.* v. *Roberts*, 7 A. & E. 441.

This section does not appear to have contemplated the case of a defendant having a good answer to the alleged defect. Accordingly, where a *quo warranto* information had been granted, the ground of prosecution being defect of title in the presiding officer, and the defendant had pleaded *that he was duly elected;* and pending the information an application was made by the prosecutor under this section; the Court made the rule absolute, though the defendant suggested he had a defence (not however specifying it) independent of the statute, and offered to pay all the costs of the trial, if he failed in establishing such defence. *Reg.* v. *Hooker*, 9 A. & E. 680. But see Lord *Denman's* observation in *Reg.* v. *Jones*, 7 A. & E. 432.

(4) See section 2 of this Act, and the notes, ante, p. 329.

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be set up against the plaintiff's right of proceeding; but the court in which such action is or shall be brought, or any judge of the same court in vacation, shall, on application of the defendant, if the Court or judge think the invalidity of any such election would have been a defence to such action, order the plaintiff in any such action to pay such defendant his costs up to the time of the application, and also his costs of the application, taxed as between party and party.

Power to take extracts from minutes, &c.

XXII. And be it further enacted, that, from and after the commencement of this Act, any burgess of any borough shall be at liberty, at all seasonable times, to make any copy of or take any extract from the book required by the said Act to be kept for the purpose of entering the minutes of council (1), and also to make any copy or take any extract from any order in council of such borough for the payment of any money; and it shall also be lawful for any alderman or councillor of any borough, at all seasonable times, to make any copy of or take any extract from the book required by the said Act to be kept by the treasurer of such borough (2).

Proceedings in *quo warranto* against mayor, &c., to be commenced within twelve months.

XXIII. And be it enacted, that, after the passing of this Act, every application to the Court of King's Bench for the purpose of calling upon any person to shew by what warrant he claims to exercise the office of mayor, alderman, councillor, or burgess in any

(1) See 5 & 6 Will. 4, c. 76, s. 69, ante, p. 130.

(2) See s. 93, ante, p. 174.

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borough shall be made before the end of twelve calendar months after the election or the time when the person against whom such application shall be directed shall have become disqualified, and not at any subsequent time(1).

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(1) Originally, twenty years was the period fixed by rule of the Court of King's Bench, 1767, after which an information in the nature of a *quo warranto* should not be granted. This time was afterwards reduced by another rule of Court to *six years* (4 T. R. 284), which was confirmed by statute 32 Geo. 3, c. 58. The words of the statute are—"six years or more *before the exhibiting of the information*." It has accordingly been held, where a rule *nisi* for a *quo warranto* information was granted at the end of Easter Term, calling upon the defendant to show cause on the first day of the ensuing Term. and it appeared that *two days before Trinity Term commenced* the defendant had completed six years enjoyment of the franchise, that the application was too late. *Reg.* v. *Harris*, 3 P. & D. 266. In discharging the rule Lord *Denman* mentioned, that, in a case somewhat similar to the above, leave had been given, under peculiar circumstances, to exhibit the *quo warranto information* on the day the rule *nisi* was obtained; but no such leave had been asked or granted in the present case.

See also *Rex* v. *Brooks*, 8 B. & C. 320; in which case A. B. had been sworn into and had exercised a corporate office for more than six years, but it was objected that he had not been sworn in *before the proper officer*, and consequently was not protected by the statute. In discharging the rule for a *quo warranto* information, Lord *Tenterden*, C. J., observed—"It is not necessary to give any opinion as to that part of the statute which speaks of 'actually swearing in,' for the Court is *not bound* to interfere at the instance of an *individual;* and as it was clearly the intention of the Legislature that six years enjoyment of a corporate office should secure the possession of it, I think we ought not to interfere." See *Rex* v.

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Applications may be made to Court of

XXIV. And be it enacted, that it shall be lawful for any person, whose claim shall have been rejected

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Rogers, 4 Burr. 2523; *Rex* v. *Dickin*, 4 T. R. 282; *Rex* v. *Peacock*, Id. 684.

See the statute, post, in the Appendix; and *Rex* v. *Stacey*, 1 T. R. 1, and also *Rex* v. *Stokes*, 2 M. & Sel. 71, where the Court determined that a relator was barred, if the six years had expired *before making the rule absolute for the information*, though they had not elapsed before the rule *nisi* was obtained.

But a title to one office, which is a qualification to hold another, is not within sect. 3 of 32 Geo. 3, c. 58, respecting derivative titles; and therefore, although the party had exercised the first for six years, the Court made the rule absolute for a *quo warranto* information for exercising the *second* office, upon a defect of title in the *first*. *Rex* v. *Stokes*, 2 M. & Sel. 72. See now, as to questioning the title of a *mayor* in this respect, 6 & 7 Vict. c. 89, s. 1, post.

Under the present Act, it will be observed that applications for *quo warranto* informations against any mayor, alderman, councillor, or burgess, must be made before the expiration of twelve calendar months after the election, *or* after the time when the person against whom such application shall be directed shall have become disqualified. And where the rule for a *quo warranto* was applied for against the mayor of a borough, the alleged defect in his title to hold the office of mayor being his undue election to the office of alderman, which latter office he had held more than twelve calendar months, the Court in its discretion refused to make the rule absolute. *Reg.* v. *Preece*, 5 Q. B. 94; Dav. & M. 156; notwithstanding the case of *R.* v. *Stokes*, *supra*. And see now the 6 & 7 Vict. c. 89, s. 1, post. Even where the application is made within the twelve months, the Court have a discretion to refuse it, if they think there has been undue delay. Thus, where the party was enrolled a burgess in November, and the application for a *quo warranto* against him was made on the last day of the following Hilary Term, no reason being

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or name expunged at the revision of the burgess roll(1) of any of the said boroughs to apply, before King's Bench for a *mandamus* to

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given for the delay, the Court refused a rule. *Reg.* v. *Hodson*, 4 Q. B. 648.

But though the *quo warranto* proceedings must be commenced within the time prescribed by this section, a party, it seems, will still be liable to be sued for the 50*l.* penalty under the 53rd section of the Municipal Act, for each time that he acts while disqualified. (See the section ante, p. 90.) And it is obvious that this clause cannot be applied to the case where the party becomes disqualified by reason

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(1) The term "*burgess roll*" is not correctly used here; it is the burgess lists, made out by the overseers, that are *revised*; from which lists, when revised, the town-clerk, under ss. 22 and 45 of 5 & 6 Will. 4, c. 76, respectively, makes the "burgess roll."

Where the overseers of one of the parishes in a borough had omitted to make out a burgess list, as required by s. 15 of 5 & 6 Will. 4, c. 76, so that at the Revision Court of the mayor there was no list in which the name of the claimant for that parish could be inserted; it was held that, as the party had made a claim, and his claim had been rejected, the Court had power under this section to order his name to be inserted on the burgess roll. *Reg.* v. *Mayor &c. of Lichfield*, 1 G. & D. 28; 1 Q. B. 453.

Semble, that the mayor might have made a list for the *claimants* of the particular parish. *S. C.*

So also, where, notwithstanding a defective *signature* of the list, the mayor had treated it as valid by expunging a single name therefrom, the party whose name was so expunged was held to be within this section, and the defectiveness of the list to be no answer to the *mandamus*. *Reg.* v. *Mayor &c. of Dover*, 11 Q. B. 260.

A person who has been omitted from the burgess list by reason of his refusal to pay an illegal rate, is entitled to a *mandamus* under this section. *Reg.* v. *Mayor &c. of New Windsor*, 7 Q. B. 908.

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put a burgess on the roll.

the end of the term then next following, to the Court of King's Bench for a *mandamus*(2) to the

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of his entering into a continuing contract with the council, within 5 & 6 Will. 4, c. 76, s. 28, in which there is a disqualification arising *de die in diem*. See *Reg.* v. *Francis*, 21 Law J., Q. B., 304.

It may be useful to insert here the following rule of Court (Q. B., Nov. 8, 1839), as to relators in *quo warranto* informations:—"*It is ordered*, that no rule be hereafter granted for filing any information in the nature of a *quo warranto*, unless, at the time of moving, an affidavit be produced, by which some person or persons shall depose upon oath that such motion is made *at his or their instance*, as relator or relators; and that such person or persons shall be deemed to be the relator or relators in case such rule shall be made absolute, and shall be named as such relator or relators in such information, in case the same shall be filed, unless this Court shall otherwise order."

Reg. Gen. M. T. 3 Vict.

On the construction of this rule, it was held, in *Reg.* v. *Hedges*, 11 A. & E. 163, that the affidavit in support of a motion for a *quo warranto* must state at *whose instance* the application is made. It is not enough for a party to depose that, if the Court grant the information, *it is his intention to become really and bonâ fide the relator*. *Littledale*, J., observed in that case, that "suppose the rule were to be made abso-

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(2) When a party applies for a *mandamus* under this section, he must come prepared in all respects to prove his title —into the goodness of which the Court are bound to inquire, before they direct the *mandamus* to issue. It will not be sufficient for him to shew that his name was expunged by the mayor on an objection, which, for want of a valid notice under ss. 17 & 18 of 5 & 6 Will. 4, c. 76, the mayor had no jurisdiction to enter into. *Reg.* v. *Mayor &c. of Harwich*, 8 A. & E. 919; 1 P. & D. 134. The Court will inquire into the whole title: not merely into the points raised before the mayor on the revision. *Reg.* v. *Mayor &c. of Lichfield*, 2 Q. B. 693; 2 G. & D. 10.

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mayor for the time being of that borough to insert his name upon the *buryess roll*, and thereupon for

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lute, and the deponent were o change his intention and refuse to proceed, how could he be relator?"

In *Reg.* v. *Anderson*, 2 Q. B. 740; 2 G. & D. 113, the affidavit was in the terms following:—" that the deponent had *directed an application* to be made to the Court of Queen's Bench, to shew cause why a writ of *quo warranto* should not be filed against (the persons who claimed to be entitled to be placed on the burgess list of the borough), *and that the said motion would be made at the instance of the deponent as relator*." The Court held the affidavit sufficient; but it appearing that the defendant had been put on the burgess roll after all the steps pointed out by sections 15 to 22 of the Municipal Act had been duly taken, and that no objection had been taken at the revision, the Court, in the exercise of their discretion, and looking to all the circumstances of the case, which were peculiar, and to the fact that the application was so late that another revision would take place before the decision of the Court could be given, discharged the rule for the *quo warranto* information.

It is no objection to a party's being a relator, that he is not a burgess: it is sufficient that he is *an inhabitant*, and subject to the government of the council. See *Rex* v. *Parry*, 6 A. & E. 848; 2 N. & P. 414; and *Rex* v. *Hodge*, 2 B. & Ald. 344, n., *acc.* So also held in *Reg.* v. *Quayle*, 11 A. & E. 508; and in *Reg.* v. *Anderson*, above cited. In *Rex* v. *Kemp*, H. T. 29 Geo. 3, B. R., cited 1 T. R. 3, note, the Court said, that where the party applying was a *stranger*, they would only require a stronger case to be made for the information. See *Rex* v. *Ogden*, 10 B. & C. 210, and the cases there cited.

In the case of applications made on behalf of *individuals*, it has always been held discretionary with the Court either to grant or refuse a rule for an information in the nature of a *quo warranto*. The promptness of the application, the conduct, and even motives, of the relator, and the circumstances of the case, may be all taken into consideration. Lord *Mansfield*, in refusing such a rule, in *Rex* v. *Stacey*, 1 T. R. 3, ob-

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the Court to inquire into the title of the applicant to be so enrolled; and if the Court shall award such

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served—"No precise rule can be laid down in these cases; but all the circumstances of the case, taken together, must govern the discretion of the Court. I refer you to the case of Rex v. Marten." In that case, reported 4 Burr. 2120, Lord *Mansfield* remarked, that the object of the statute of Anne was to cause *speedy* prosecution, and to quicken the removal of usurpers; and, on refusing the rule, said, "Our grounds are three, *taken together: First*, the light in which the three relators now informing the Court of this defect of title appear, from their behaviour and conduct relative to the subject-matter of their information, previous to their making this motion; *secondly*, the light in which the application itself manifestly shews their *motives;* and *thirdly*, the *consequences* of granting the information."

These principles have been frequently recognised by the Court. In *Rex* v. *Trevenen*, 2 B. & Ald. 482, Lord C. J. *Abbott* lays down the general rule in accordance with this view, adding, "In the case of individual members of the corporation, it is wholly within the discretion of this Court to say whether such an information ought to be granted or refused." And see the remarks of the same learned judge in *Rex* v. *Brooks*, above cited, p. 345. See also *Rex* v. *Parry*, 6 A. & E. 810, *acc.*; *Rex* v. *Slythe*, 6 B. & C. 242; *Reg.* v. *Greene*, 1 Q. B. 460; and Tancred on *Quo Warranto*, 37, 38, where rules were refused on the ground of the *acquiescence* or *concurrence* of the relator. But it is no objection to the application, that the relator has frequently acted with the party against whom he applies, in corporation business, not being shewn to have actually concurred in his election; nor that he has taken part in *other* elections where the same irregularity in fact existed, but was not noticed: nor that the relator is influenced by strong party spirit in the application. *Rex* v. *Benney*, 1 B. & Adol. 684.

In cases which furnished suspicion of collusion, the relator has been ordered to give *security for costs:* see *Rex* v. *Wakelin*, 1 B. & Adol. 50. But it is no ground for refusing the rule

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mandamus, the mayor shall be bound to insert the name upon the burgess roll, and shall add thereunto the words "By order of the Court of King's Bench," and shall subscribe his name to such words; and thereupon the person whose name shall be so added to the burgess roll shall be deemed a burgess and entitled to vote and act as a burgess in all respects as if his name had been put upon the burgess roll by the mayor and assessors; and upon every such application the Court shall have power to make such order with respect to the costs as to the Court shall seem fit(3).

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altogether, that there is strong reason to suspect that the relator, being in indigent circumstances, is applying, not at his own expense, but in collusion with a stranger. *Id.* In *Reg.* v. *Greene*, 4 Q. B. 696, the costs of the rule, on its being discharged, were ordered to be paid by the party who made the affidavit, the relator being a person in indigent circumstances, evidently put forward by the other party. If, however, the facts making such party liable to the costs appear only on the affidavits in opposition to the rule, the payment of costs by him must be made the subject of a distinct application, that he may have an opportunity of answering them. *Id.*

Where the object of the *quo warranto*, against an individual member of a corporation, clearly is to call in question the validity of the charter granted to it by the Crown, the Court will refuse it. *Reg* v. *Taylor*, 11 A. & E. 954.

See, in connexion with this subject, ante, pp. 75, 81.

See 6 & 7 Vict. c. 89, s. 5, for expediting proceedings by way of *mandamus* and *quo warranto*, post.

(3) Where a party failed in his application under this section, the rule was discharged *with costs:* on the general principle that where a person is required by law to pronounce a decision, and that decision is called in question before the Court and proves to be right, such person is entitled to his

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In case elections are not made within the time appointed by 5 & 6 Will. 4, c. 76, and this Act, the corporations may proceed to such elections on the following day.

XXV. And be it enacted, that, after the passing of this Act, in case no election shall be made of any mayor, or any of the aldermen, councillors, or other corporate officers in any borough named in the said schedules, upon the day or within the time appointed by the said Act for regulating corporations or by this Act for any such election, or such election being made shall afterwards become void, whether such omission or avoidance shall happen through the default of the officer or officers who ought to

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costs. *Reg.* v. *Mayor of Bridgnorth*, 10 A. & E. 66: see also 1 Q. B. 751.

The *mandamus* to insert a name on the burgess roll under this section was held not to be *peremptory* in the first instance. *Reg.* v. *Mayor &c. of Eye*, 9 A. & E. 670. But the propriety of this decision (where the Court is satisfied of the title on affidavit) was doubted by Lord *Denman* in a subsequent case, *Reg.* v. *Mayor &c. of Dover*, 11 Q. B. 260.

Before the passing of this Act, the decision of the mayor was conclusive. See ante, 5 & 6 Will. 4, c. 76, s. 18, p. 36. This section was intended to remedy the defect; but it may be questioned whether it is a remedy which a prudent person would avail himself of, inasmuch as in the majority of cases involving any points of difficulty, the municipal year will have expired, and a new burgess list will consequently be in existence, before the opinion of the Court can have been obtained. Instances might be given where a party has obtained a *mandamus*, and a return to it has been made, but the proceedings have, after a large and useless expenditure, been abandoned, solely because the judgment of the Court would be too late to be of any service. Some less expensive and more expeditious remedy, it is suggested, might be afforded. The Court of Common Pleas has had, by the stat. 6 & 7 Vict. c. 18, the duty assigned to it of deciding cases reserved on the parliamentary revision. Why should not this Court hear, as a Court of Appeal, reserved municipal cases also?

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preside at such election, or by any accident or other means whatsoever, the corporation shall not thereby be deemed or taken to be dissolved or disabled from electing such mayor, alderman, or councillor, or other corporate officer, for the future, but in any case where no such election shall be made as aforesaid, the election for any such mayor, alderman, councillor, or other corporate officer may be had, held, and proceeded with upon the day next after the day on which such election ought to have been made, unless such day shall happen to be on a Sunday, and then upon the Monday following, and every act necessary to be done in order to and for the completing such election shall and may be then done, and the same shall be as effectual and valid for all purposes as if the election had been made on the proper day appointed for that purpose (1).

Powers given to Court of King's Bench under 11 Geo. 1, c. 4, extended to elections under 5 & 6 Will. 4, c. 76, and this Act.

XXVI. And be it enacted, that after the passing of this Act all the powers, authorities, and jurisdictions by an Act of the eleventh year of the reign of his late Majesty King George the First, intituled *An Act for preventing the Inconveniences arising from Want of Elections of Mayors or other Chief Magistrates of Boroughs or Corporations being made upon the days appointed by Charter or Usage for that Purpose, and directing in what Manner such Elections*

(1) The Court refused a *mandamus* to the corporation to make publication (which had been omitted), or swear in the new burgesses, as having no authority to do so. But a rule, absolute in the first instance, to proceed to a new election under s. 26, infra, was afterwards granted. *In re Corporation of Carmarthen*, Q. B., M. T., 1845.

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should be afterwards made, given to His Majesty's Court of King's Bench in cases *where no election* shall be made of the mayor, bailiff, or bailiffs, or other chief officer or officers of cities, boroughs, or towns corporate, upon the day or within the time appointed by charter or usage for that purpose, and that no election is made pursuant to the directions in that Act prescribed, or such election being made shall afterwards become void as in that Act mentioned, shall and the same are hereby extended to all cases (2) in which no election shall be made of

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(2) This section, it will be seen, applies to cases only where there has been no election, or where the election afterwards, by default or accident, becomes void. See ante, 5 & 6 Will. 4, c. 76, ss. 28 & 52, and notes, as to cases where a party, after his election, and during the holding of his office, becomes disqualified.

In *Reg.* v. *Mayor &c. of Leeds*, 7 A. & E. 963, it was held that the election is not *a nullity* within this section, because a notice has been given of two vacancies instead of one, and a majority of burgesses have voted for two candidates jointly; the third candidate, chosen by single votes, being duly elected. See this case cited more fully ante, p. 60.

Where a person had been *re-elected* mayor for the year immediately succeeding that during which he had served the office, and such election was consequently void under 9 Ann. c. 20, s. 8, the Court granted a *mandamus* to proceed to an election of mayor, as in the case of "no election" having taken place. *Reg.* v. *Corporation of Pembroke*, 8 Dowl. P. C. 302.

Such rule must be directed to the mayor &c. of the borough (that being their corporate title), though no mayor may be actually in existence. *Id.*

The above section of the statute of Anne has since been repealed by 3 & 4 Vict. c. 47, which see post, Appendix.

A *mere de facto* election is not sufficient to prevent the

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any mayor, alderman, councillor, or other corporate officer, or other person, to any corporate office on the day or within the time appointed for any such election under the provisions of the said Act of the fifth and sixth years of the reign of his present Majesty for regulating corporations, or of this Act; and the said Court of King's Bench is hereby empowered in all such cases to award a *mandamus*, and to cause such proceedings to be had thereupon, and to make such orders, and to do all other acts, matters, and things in respect thereof, as fully and effectually as the said Court is now by law authorised in any other cases of mandamus for the election of any officers of corporations; and the election to be held under such mandamus shall be held and the proceedings thereon conducted within the borough in the same manner and under the like regulations and provisions as are in the said Act of his Majesty King George the First enacted and provided.

Freemen may be admitted who were entitled before the passing of 5 & 6 Will. 4, c. 76.

XXVII. And be it declared and enacted, that every person who at the time of the passing of the said Act for regulating corporations was entitled to be admitted to the freedom of any borough named in the schedules to the last-recited Act shall be entitled to be admitted thereunto in like manner, and

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Court from issuing a *mandamus* under 11 Geo. 1, c. 4. In all cases where the Court can see the election to be merely *colourable and void*, it will grant a *mandamus*. See *Rex* v. *Mayor &c. of Cambridge*, 4 Burr. 2008; see also the *Case of the Borough of Tintagel*, 2 Str. 1003; and Lord *Mansfield's* observations in *Rex* v. *Bankes*, 3 Burr. 1454; *Rex* v. *Godwin*, Doug. 382; and *Rex* v. *Mayor &c. of Winchester*, 7 A. & E. 215.

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subject to the same conditions, restrictions, and limitations in all respects, as any person who shall have acquired his title to such freedom after the passing of the last-recited Act (9).

Money borrowed to discharge any pre-existing debt to be deemed a debt contracted before the passing of 5 & 6 Will. 4, c. 76.

XXVIII. And whereas by an Act passed in the last session of Parliament, intituled *An Act for the better Administration of the Borough Fund in certain Boroughs*, it is enacted, that it shall be lawful for the council of any borough named in the schedules (A.) and (B.) annexed to the first hereinbefore mentioned Act, to execute from time to time any deed or obligation in the name of the body corporate whose council they are for securing repayment and satisfaction of any debt or obligation contracted by or on behalf of the said body corporate before the passing of the said Act for regulating corporations; Be it enacted, that any money borrowed by any such council for the purpose of being applied and which shall be actually applied in or towards satisfaction and discharge of any such pre-existing debt or obligation shall be deemed and taken to be, within the true intent and meaning of the said Act of the last session of Parliament, a debt contracted by or on behalf of such body corporate before the passing of the said Act for regulating corporations (1).

Overseers may levy borough rates on parts (ex-

XXIX. And whereas the limits of boroughs in some cases extend over parts of parishes, townships,

(9) See ante, 5 & 6 Will. 4, c. 76, s. 5.

(1) See ante, 5 & 6 Will. 4, c. 76, s. 92, and note (4); 6 & 7 Will. 4, c. 104, s. 1, and note (1).

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and places, parochial or otherwise, leaving the remainder of such parishes, townships, and places without the limits of such boroughs; and doubts have arisen whether the said Act contains provisions under which the share which ought to be paid by the parts included within the limits of any borough of any borough rate to be levied in pursuance of the same Act can be assessed and levied upon such parts exclusively of the remainder not within the limits of the borough; Now be it enacted, that the overseer or overseers of the poor within any parish (2), township, or place whereof part lies within the limits of a borough as aforesaid, or any person or persons who, in pursuance of the powers contained by reference in the said Act, shall be appointed to act as overseer or overseers, shall and may and is and are hereby empowered to levy and raise, in manner directed by the said Act, upon such part exclusively of any parish, township, or place as is situate within the limits of such borough, such sum or sums of money as shall be required to pay every borough rate (including rates already paid by such overseer or overseers or other person or persons) assessed and to be hereafter assessed under the authority in the said Act (3), upon such part of any such parish,

clusively) of any parish within the limits of the borough.

(2) See post, 7 Will. 4 & 1 Vict. c. 81, s. 3; 8 & 9 Vict. c. 110, and 12 & 13 Vict. c. 65, regulating the collection of borough and watch rates, in the case of parishes partly within and partly without any borough, and also of extra-parochial places wholly or partly within any such borough. See also 5 & 6 Vict. c. 98, s. 7, as to the levying of gaol rates in such case.

(3) See 5 & 6 Will. 4, c. 76, s. 92, ante, p. 168.

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township, or place as lies within the limits of such borough.

Certain matters of local jurisdiction made cognisable by justices of peace for the county, &c.

XXX. And be it enacted, that all matters cognisable by virtue of any local Act of Parliament or otherwise by any justice of the peace or by the general or quarter sessions of the peace having jurisdiction within any place which since the passing of the said Act for regulating corporations, or of an Act passed in the sixth and seventh year of the reign of his present Majesty, intituled *An Act to make temporary Provision for the Boundaries of certain Boroughs*, has ceased, or which under any future Act may cease to be within and to be part of any borough or the liberties thereof, shall be cognisable by the justices of the peace or the general or quarter sessions of the county, riding, or division, liberty or jurisdiction, within which such place is situate, in the same manner and subject to the same provisions as the same were within the jurisdiction of the justices of the peace for that borough or place or of the general or quarter sessions of the same (1).

6 & 7 Will. 4, c. 108.

Offences against local Acts made cognisable by borough justices.

XXXI. And be it enacted, that, after the passing of this Act, all offences committed within any borough, or the precincts thereof, against the provisions of any local Act of Parliament, shall be cognisable by the justices of such borough (2), and such

(1) See ante, 5 & 6 Will. 4, c. 76, ss. 7 and 8.

(2) A local Act, 41 G. 3, c. 126, authorised a paving rate for the parish of Bathwick, in the county of Somerset; the money to be rated and assessed was from time to time to be

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justices shall possess all the powers and jurisdiction with respect to such offences which were heretofore possessed by the justices of any county, riding, division, liberty, or jurisdiction, by virtue of any such local Act: Provided always, that in every case in which imprisonment might be awarded for any such offence, or to enforce payment of any penalty imposed by any such Act, such imprisonment may be awarded to take place in any gaol to which the justices of that borough have power to commit offenders. Proviso.

XXXII. And be it enacted, that every court of record for the trial of civil actions within any borough named in the schedules to the said Act for regulating corporations, may, in the absence of the recorder, be holden for all purposes within the competency of the said court (except the trial of issues in law or in fact) before any person whom the recorder shall from time to time appoint for that purpose under his hand and seal, such person being a Before whom courts of record may be holden.

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paid by the tenants or occupiers, and they were required to pay the same by equal quarterly payments, to the collectors to be appointed by the commissioners; and the rate was directed to be enforced by the distress warrant of a justice of the county. By 5 & 6 Will. 4, c. 76, ss. 7, 8, Bathwick became part of the borough of Bath. The charter of that borough has a non intromittant clause, and there is a separate court of quarter sessions.

The nonpayment of these rates was held to be an offence against this section, and the jurisdiction of the county justices under the local Act to be transferred thereby to the justices of the borough. *Reg.* v. *Sutcliffe*, 13 Q. B. 833; 3 New Sess. C. 634.

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barrister-at-law or attorney of five years practice(3).

Orders, affidavits, &c., now made by or before the recorder, may be made by or before the registrar, in absence of the recorder.

XXXIII. And be it enacted, that all rules, orders, and affidavits, and all other matters and things, (except the trial of issues in law or in fact,) in any way relating to the business of any borough court of record not regulated by local Act of Parliament, of which the recorder or his deputy is or hereafter may become the judge or now acts as assessor, which must now by law be made, sworn, or done by or before such recorder or such deputy, or other the judge of the said court, may be made, sworn, or done, either in court or out of court, in the absence of the said recorder or his deputy, by or before the registrar of such court, or such other person, being a barrister-at-law or attorney of five years standing, as the recorder shall appoint under his hand and seal.

Recorders to be sole judges of borough courts in which they act as assessors.

XXXIV. And be it enacted, that in every such borough court of record in which the recorder acts as assessor, he shall, after the passing of this Act, be the sole judge; and that the provisions of this Act, and of the said Act for regulating corporations, and also of an Act passed in the last session of parliament, intituled *An Act for the better Administration of Justice in certain Boroughs*, shall extend to all such courts of which the recorder now acts as assessor, or of which he shall hereafter become the

6 & 7 Will. 4, c. 105.

(3) See post, 2 & 3 Vict. c. 27; and ante, 6 & 7 Will. 4, c. 105, s. 9.

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judge, anything in the last-mentioned Acts, or either of them, to the contrary notwithstanding (1).

Jurisdiction of court of record may be extended.

XXXV. And be it enacted, that if his Majesty shall be pleased, upon the joint petition of the council of any borough named in either of the schedules to the said Act for regulating corporations, and of the justices of the adjoining county, riding, parts or division of a county, in quarter sessions assembled, to grant that the jurisdiction of any court of record for the trial of civil actions, or of any court of requests or of conscience for the recovery of small debts within such borough, shall be extended over any district adjacent to the said borough, and within the jurisdiction of such quarter sessions, such as to his Majesty, with the advice of his privy council, shall seem fit, the jurisdiction of every such court respectively shall be extended according to the tenor of the grant; and all the powers and provisions contained in the said Act for regulating corporations, and in an Act passed in the last session of Parliament, intituled *An Act for the better Administration of Justice in certain Boroughs*, and in this Act, relating to any such court, shall extend to the whole district comprised within such extended jurisdiction (2).

6 & 7 Will. 4, c. 105.

Jurors may be summon-

XXXVI. And whereas by the said Act for re-

(1) See ante, 5 & 6 Will. 4, c. 76, s. 118; 6 & 7 Will. 4, c. 105, s. 9; and post, 2 & 3 Vict. c. 27. And see, in the Appendix, the rules of the Borough Court of Portsmouth.

(2) See ante, 5 & 6 Will. 4, c. 76, s. 118, p. 217.

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ed more than once yearly, when all who are qualified have been once summoned.

gulating corporations it is provided that no person shall be summoned to serve as a juror at the court of session of the peace, or court of record, in any borough named in either of the schedules to the said Act, oftener than once in one year; Be it enacted, that nothing in the said Act contained shall prevent or excuse any person, qualified and liable to serve on any such jury, from being summoned a second time in one year, in case every person qualified and liable so to serve shall have been summoned once during that year (3).

Councils of boroughs to have same powers as justices in general or quarter sessions had in relation to building &c. gaols, &c.

XXXVII. And be it enacted, that the several councils of the cities of Canterbury, Lichfield, and Lincoln, and of every other borough named in the schedules to the said Act for regulating corporations, shall have all the powers for building, enlarging, and repairing any gaol or house of correction belonging to their city or borough respectively, which the justices having the government or ordering of any gaol or house of correction in any city or borough within the provisions of an Act passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled *An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales*, or of an Act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled *An Act for amending an Act of the last Session of Parliament, relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for pro-*

4 Geo. 4, c. 64.

5 Geo. 4, c. 85.

(3) See ante, 5 & 6 Will. 4, c. 76, s. 121, p. 221.

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curing Information as to the State of all other Gaols and Houses of Correction in England and Wales, had in general or quarter sessions, before the passing of the said Act for regulating corporations (1); subject, nevertheless, to any alteration made in the last-recited Acts, or either of them, by an Act made in the fifth and sixth years of his Majesty, intituled *An Act for effecting greater Uniformity of Practice in the Government of the several Prisons in England and Wales, and for appointing Inspectors of Prisons in Great Britain*, and all things by any Act of Parliament provided to be done at any general or quarter sessions of the peace, in relation to the building, enlarging, or repairing any such gaol or house of correction, shall be done at some quarterly meeting of the council of the city or borough (2): Provided always, that before the building, enlarging, or repairing any such gaol or house of correction, the expediency thereof shall first be certified under the hand of the recorder or other judge of such city or borough: Provided also, that all rules and regulations made for the government of any prisoners confined in any such gaol or house of correction shall be approved by two or more justices acting in and for that city or borough, before they shall be transmitted to the Secretary of State (3).

5 & 6 Will. 4, c. 38.

Proviso.

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(1) As to these powers, see *Thompson* v. *Raikes*, 1 A. & E. 863; and *Rex* v. *Justices of Kingston-upon-Hull*, Id. 880.

(2) But see now 5 & 6 Vict. c. 53, s. 2, and 5 & 6 Vict. c. 98, s. 17, post. See also n. (1), ante, p. 214.

(3) By the 15th section of the stat. 2 & 3 Vict. c. 56, "for the better ordering of prisons," it is enacted, "that in every

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Justices of cities or boroughs to regulate gaols, &c., therein at quarterly sessions.

XXXVIII. And be it enacted, that all the powers of regulation which before the passing of the said Act for regulating corporations were possessed by the justices having the government or ordering of any such gaol or house of correction, and all things by any Act of Parliament provided to be done at any general or quarter sessions of the peace, in relation to the regulating of any such gaol or house of correction (1), shall, subject to any such alteration as aforesaid, be exercised or done by the justices of the city or borough to which such gaol or house of correction shall belong (2), and for that

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borough gaol and house of correction, a clergyman of the Church of England shall be appointed by the same authority by which the keeper is appointed," &c.

On reference to the charter of the city of Bath, to the above section, and to the Municipal Corporation Acts, it was held that the appointment of chaplain to the borough gaol of that city was in the town council, and not in the justices of the peace for the borough. *Reg.* v. *Bishop of Bath and Wells*, 5 Q. B. 147; Dav. & M. 173.

See *Reg.* v. *Justices of Lancashire*, 11 A. & E. 156.

(1) See ante, s. 116 of 5 & 6 Will. 4, c. 76, p. 213. The appointment of a *gaoler*, or of a *surgeon* or other officer of any such gaol &c. is a thing to be done "in relation to the regulating of any such gaol" &c., and is therefore now vested in the borough justices, and not in the town council, notwithstanding 5 & 6 Will. 4, c. 76, s. 116, and 2 & 3 Vict. c. 56, s. 1, extending to *all* borough gaols in England the provisions of the 4 Geo. 4, c. 64, subject to the exceptions therein contained, which do not extend to the power of appointing officers of the gaol. See *Hammond* v. *Peacock*, 1 Exch. 41; *Reg.* v. *Lancaster*, 10 Q. B. 962.

(2) See 14 & 15 Vict. c. 55, s. 19, authorising borough justices to commit assize prisoners to the borough gaol, &c.

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purpose the justices shall hold a quarterly session at the usual times of holding quarterly sessions of the peace: Provided, that no order made by the justices in pursuance of these powers, which shall require the expenditure or payment of any money, shall be of force until confirmed by the council of that city or borough (3).

Mayor, &c., not to be interested in any contract for building, &c. gaols, &c.

XXXIX. And be it enacted, that it shall not be lawful for any mayor, alderman, councilman, or other officer of a corporation, to be interested or concerned or employed, directly or indirectly, as an architect, builder, artist, mechanic, workman, merchant, trader, or otherwise howsoever, in any part of the work to be done or materials to be supplied at any such gaol or house of correction, or in any contract whatever relating thereto (1); and if any one holding such office shall be so interested, concerned, or employed in such work or contract as aforesaid, he shall thenceforward be disqualified from continuing to hold such

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(3) The duty of the council under this section is not merely *ministerial*, to confirm the orders of the justices; they have a discretion to approve or disapprove of the order sent to them. They were held to be entitled, therefore, to refuse to confirm an order for the appointment of a gaoler, on the ground that they considered the salary assigned him by the justices excessive. *Reg.* v. *Mayor &c. of York*, 1 E. & B. 588.

(1) Looking to the provisions of section 37, which relate to the building, enlarging, and repairing of the borough gaol, and also to the words here used, it is considered that this section is confined to contracts connected with the building, &c. of the gaol. All other dealings, &c. are prohibited by s. 28 of the Municipal Corporation Act, which, with the notes, see ante, p. 52.

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office, and also from being thereafter elected or appointed to fill any corporate office within any such city or borough.

Borough gaol may be built beyond the limits of the borough.

XL. And be it enacted, that it shall be lawful for the mayor, aldermen, and burgesses of any borough, by their council, to contract for the purchase of, and to have and hold to them and their successors, any lands not exceeding in the whole five acres (1), either within or beyond the limits of the borough, and to build thereon a town-hall, council-house, police-office, gaol, or house of correction for the borough (2); and any such gaol or house of correction, although built beyond the limits of the borough, may be declared by a resolution of the council, and upon such resolution shall be taken to be the gaol or house of correction of the borough, and shall be within the same jurisdiction, and shall be governed

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(1) By this section the corporation are enabled to purchase any lands "*not exceeding in the whole five acres*" for the purpose of building thereon a town hall, council house, police office, gaol, or house of correction for the borough. Land cannot, however, be purchased for any other objects than these which are distinctly specified, the statutes of mortmain prohibiting corporations from purchasing lands in fee.

See 5 & 6 Vict. c. 98, s. 2, enabling the council to *borrow money* for the purpose of building, &c. a prison, court-house, or any other necessary buildings, &c., and for the purchase of land for the purpose of such buildings. See also 5 & 6 Vict. c. 53, s. 3, and 11 & 12 Vict. c. 39, post.

By 5 & 6 Vict. c. 98, s. 13, the power of purchasing is extended to so much land as one of her Majesty's Secretaries of State shall deem to be necessary for the prison.

(2) See *Reg.* v. *Justices of Lancashire*, 11 A. & E. 156.

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and regulated in like manner as if within the limits of the borough (3).

Gaols, &c. under county jurisdiction previous to 6 & 7 Will. 4, c. 103, excluded from the provisions of that Act.

XLI. And whereas, by the extension of the boundaries of certain boroughs, cities, and places, the county gaols, court houses, depôts for militia arms, and other public edifices and offices of counties have been included within the boundaries of those cities or boroughs, and are thereby subject to the jurisdiction of such cities or boroughs, and of the sheriffs and other municipal authorities thereof; in remedy whereof be it enacted, that all county gaols (1), courts, depôts for arms, and all lands, buildings, easements, and appurtenances thereunto belonging, which before the passing of the Act passed in the last session of Parliament to make temporary provision for the boundaries of certain boroughs, or the authorised extension of the boundaries of any borough since the passing of that Act, were in, of, or belonging to any county, shall be taken to, be, and considered and shall remain part and parcel of such county, and under the exclusive jurisdiction of the authorities of such county, as if the said last-mentioned Act had not passed.

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(3) *Semble*, that, notwithstanding the words "shall be taken to be within the jurisdiction, &c."—such gaol, &c. would be liable to the county rate, but for the provisions of the 12 & 13 Vict. c. 82, which see post.

(1) See 5 & 6 Will. 4, c. 76, s. 8, ante, p. 13; the proviso at the end of which enacts, that every county gaol, house of correction, or lunatic asylum, court of justice, or judge's lodging, which at the time of the passing of that Act was taken to be for any purpose within any county, shall still *for all such purposes* be taken to be within such county.

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Certain borough debtors and prisoners in contempt may be removed to the county gaol.

XLII. And be it enacted, that in every case in which, by virtue of any contract made between the council of any borough and the justices of any county, riding, parts, or division of a county, liberty, or jurisdiction, according to the provisions of the said Act for regulating corporations, the gaol belonging to such county, riding, parts, or division of a county, liberty, or jurisdiction, shall be used as the gaol of such borough, prisoners for debt or in contempt arrested in any such borough, under any process from any court, may be taken and removed from such borough, and confined in that part of such gaol which is appropriated to debtors, and such removal shall not be taken to be an escape: Provided always, that every such prisoner shall still be taken to be within the legal custody of the person or persons in whose custody he would have been if imprisoned within the borough gaol; and the sheriff of such county, riding, parts or division of a county, liberty, or jurisdiction shall not be answerable for the safe custody of any such prisoner: Provided also, that it shall be lawful for the person or persons in whose custody such prisoner would have been if imprisoned within the borough gaol, to take such security from the gaoler or keeper of the gaol to which any such prisoner shall be so removed, for the safe custody of all such prisoners, as shall be agreed on between the council and justices aforesaid.

Period to which accounts shall be made up. 6 & 7 Will. 4, c. 104.

XLIII. And whereas an Act was passed in the last session of Parliament, intituled *An Act for the better Administration of the Borough Fund in certain Boroughs*, providing among other things that accounts of the receipt and expenditure on account of

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the mayor, aldermen, and burgesses of such boroughs should be sent to one of his Majesty's principal Secretaries of State, and be laid before both houses of Parliament; Be it enacted, that every such account shall be made up to the last period of audit of the said receipt and expenditure, and not further or otherwise (1).

Orders for payment of money may be removed into the Court of King's Bench by *certiorari*.

XLIV. And whereas it is expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund; Be it therefore enacted, that any order of the council of any borough (2) for the payment of any sum of money from or out of

(1) See ante, 5 & 6 Will. 4, c. 76, s. 93, and 6 & 7 Will. 4, c. 104, s. 10.

(2) Any order of the council for *the payment of money* out of the borough fund may be removed under this section; and this, though the order was made and the account settled and audited before the passing of the Act. The words of the section are general, and clearly retrospective, and are not confined to orders thereafter to be made, or to accounts not settled or audited at the time of the passing of the Act. *Reg.* v. *Mayor &c. of Bridgewater*, 10 A. & E. 281, and *Reg.* v. *Paramore*, Id. 288. See these two cases cited ante, p. 166. The order may be removed, though not signed by three members of the council and countersigned by the town-clerk, according to 5 & 6 Will. 4, c. 76, s. 59. *Reg.* v. *Town Council of Lichfield*, 4 Q. B. 893; Dav. & M. 491. Nor is it any answer to the application to say that the order is contained in a book which cannot be brought up without inconvenience, and cannot be taken out of the book without injury to the other entries in it. *Id.*

See 5 & 6 Will. 4, c. 76, s. 132, preventing the removal of any orders &c. made under that Act.

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the borough fund of any borough, may be removed into the Court of King's Bench by writ of *certiorari*, to be moved for according to the usual practice of the said Court with respect to writs of *certiorari*; and that such order may be disallowed or confirmed upon motion and hearing, with costs (3), according to the judgment and discretion of the said Court.

Manner of transferring corporate property standing in the Bank books, &c.

XLV. And be it enacted, that any stocks, funds, or public securities, which may be standing in the books of the governor and company of the Bank of England, or of any other public company or society, in the name of the mayor, aldermen, and burgesses of any borough, either under their present or under any former style or title of incorporation, and the dividends and interest thereof, and all bonuses and accretions thereunto, which shall belong to the body corporate of such borough, without being subject to any trust for charitable purposes, may be transferred by and paid to such person or persons as the council of the said body corporate shall appoint by an instrument in writing, under the corporate seal of the

(3) The Court is not obliged, under this section, to disallow payments actually made, even though the charges may be so far irregular that payment could not have been enforced. *Reg.* v. *Prest*, 16 Q. B. 32. Where the Court has quashed such an order, "with costs to be paid by *the prosecutors*," attachments cannot be obtained against individual members of the council for the non-payment of such costs, though they have made affidavits in opposition to the rule for the *certiorari*. *Reg.* v. *Dunn*, 5 Q. B. 959; Dav. & M. 737. And it seems that such costs are not payable out of the borough fund. *Id.* See *Reg.* v. *Greene*, 4 Q. B. 646; and *Reg.* v. *Duncan*, 5 Q. B. 959.

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borough; provided that such instrument of appointment shall be signed and sealed also by the clerk to the charitable trustees of the borough, who is hereby directed, upon request, to sign and seal the same.

Manner of transferring charitable property standing in the Bank books, &c.

XLVI. And be it enacted, that any stocks, funds, securities, and monies standing as aforesaid in the name of any such body corporate, which shall belong to the charitable trustees of the borough solely upon some charitable trust or trusts, may be transferred by and paid to such person or persons as shall be appointed under the hands and seals of the greater part of the trustees, which appointment shall be attested under the hand and seal of the said clerk, provided that such instrument as last aforesaid shall be also sealed with the corporate seal of the borough; and the mayor of the borough is hereby required, upon request, to cause the seal of the borough to be affixed to such instrument of nomination (1).

By what authority, and to whom dividends of charitable and corporate property standing in the Bank books, &c., shall be paid.

XLVII. And be it enacted, that the dividends and interest of any stocks, funds, securities, and monies standing as aforesaid in the name of any such body corporate which shall belong partly to the said body corporate, but subject to some charitable trust or trusts, may be paid to such person or persons as shall be authorised to have the same paid to him or them, by an instrument in writing under the corporate seal of the borough, and appointed under the hands and seals of the greater part of the trustees,

(1) See ante, 5 & 6 Will. 4, c. 76, s. 71, p. 133.

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which appointment shall be attested under the hand and seal of the said clerk.

Receipts for monies, and application thereof.

XLVIII. And be it enacted, that in every case the receipt of the person or persons authorised to give a receipt to the said company or society, by any instrument under the corporate seal of the said borough, and also signed and sealed by the clerk to the charitable trustees, shall be an effectual discharge to the said company or society; and all monies so paid shall be applied to the uses and in the manner provided by the said Act; that is to say, so much of the said monies as may be held on charitable trusts shall be paid over to the charitable trustees of the said borough, and so much as the said body corporate shall be entitled to beneficially shall be paid over to the treasurer of the borough, and applied as directed by the said Act as part of the borough fund; but no such public company or society as aforesaid shall be bound to see to the due application thereof, or to the validity of the appointment of the clerk to the charitable trustees, or to the execution of any such instrument by any of the said trustees, or to inquire whether or not the said stocks, funds, securities, or monies are charged with or held upon any charitable trust; and every person authorised to receive any monies under this Act shall account to the council and to the charitable trustees respectively for all monies so received by him, and the council and trustees respectively shall have the same remedies against any such person refusing or wilfully neglecting so to account as are provided by the said Act for regulating corporations, in the case of a treasurer or other officer appointed by the coun-

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cil refusing or wilfully neglecting to account, as provided by the said Act, during the continuance of his office, or within three months after the expiration of his office.

Powers of the Act 5 & 6 Will. 4, c. 76, may be granted by

XLIX. (1) And be it enacted, that if the inhabitant householders of any town or borough in England or Wales shall petition(2) his Majesty to grant

(1) This section was inserted in consequence of one or two inaccuracies in section 141 of the Municipal Corporation Act. See the section, and note, ante, p. 244.

(2) See n. (2) to the 5 & 6 Will. 4, c. 76, s. 141, ante, p. 231. The following case was decided in the Court of Exchequer Chamber, upon a charter granted under this section to the borough of Manchester:—

A petition, which had been agreed upon at a meeting of the rate-payers of the parliamentary borough of Manchester, convened by public advertisement, and which was in fact attended by 1000 (and which petition was afterwards signed by 4000) inhabitant householders of the borough, was presented to her Majesty, praying for the grant of a charter of incorporation to the inhabitants of such borough, under the provisions of the above section. Afterwards, and before the day appointed for this petition being taken into consideration by the Privy Council, a counter-petition, signed by 6000 of such inhabitant householders, was presented to her Majesty, praying her not to grant such charter. The whole number of inhabitant householders of the borough amounted to 48,000. It was held—

"1. That the second petition did not necessarily, in point of law, deprive her Majesty of the power to grant such charter upon the first petition; but that, whether the first petition was, under all the circumstances, the petition of the inhabitant householders of the borough, so as to authorise the exercise of the powers conferred by this section, was a question of fact for a jury; and that the determination of the

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the Crown to towns or boroughs,

to them a charter of incorporation, it shall be lawful for his Majesty, by any such charter, if he shall think

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Privy Council to advise the Crown to grant the charter upon such petition was not *conclusive* of its validity.

"2. The grant of such charter of incorporation is an exercise of the common-law prerogative of the Crown, although it also extends to the new corporation the powers of the Municipal Act, 5 & 6 Will. 4, c. 76, which the Crown has power to do only by virtue of the above section.

"3. Such charter may be granted to a *part* only (to be defined therein) of the borough from the whole of which the petition emanated, and need not be conferred upon the inhabitant householders of the whole borough.

"4. The Crown may, by its common-law prerogative, appoint in such charter the number, and set out the limits, of the wards in the new borough.

"5. The Crown may also, by such charter, delegate to an individual the power of appointing the first members of such corporation; or may, at all events, appoint a person to ascertain the individuals who compose the class to whom the charter is granted. [Lord *Denman*, C. J., and *Williams*, J., *diss.*]

"6. The provisions of the 5 & 6 Will. 4, c. 76, as to the machinery for the formation and revision of the burgess list, being applicable only to then-existing corporations, and to the particular period at which that Act took effect, need not be precisely followed in the case of new corporations created by charter under the powers conferred on the Crown by the above section, but may be followed *cy près*. Therefore, the appointment, in such charter, of individuals named therein, to make out and revise the lists, and to act as returning-officer at the first election under such charter, is good. So also, days for holding the first elections, though not agreeing with those named for the elections in 5 & 6 Will. 4, c. 76, may be appointed by such charter.

"7. Nor is such charter *void*, because it directs the person appointed to make out the first list, to include in it only "all inhabitant householders within the borough, who shall

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fit, by the advice of his privy council, to grant the same, to extend to the inhabitants of any such town or borough within the district to be set forth in such charter all the powers and provisions of the said Act for regulating corporations, whether such town or

though not corporate.

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possess the qualification required by the 5 & 6 Will. 4, c. 76," instead of including also all persons occupying shops &c within the borough, and being inhabitant householders residing within seven miles thereof, according to the schedule to that Act." [*Williams*, J., *dubitante*].—*Rutter* v. *Chapman*, (in error), in the Exchequer Chamber, 8 M. & W. 1.—See now the 5 & 6 Vict. c. 111, post, confirming this charter and others in the like predicament, and providing for compensation to certain officers.

The Court will not grant a *quo warranto* information against an individual member of a corporation, where the object clearly is to call in question the validity of a charter granted under this section. *Reg.* v. *Taylor*, 11 A. & E. 954. In *Reg.* v. *Davies*, Q. B., H. T. 1840 (the case of a coroner of Birmingham), a rule was granted by the Court of Queen's Bench, previously to the decision of the above case, on grounds nearly similar to those in *Reg.* v. *Taylor*: but the attention of the Court was not there drawn to the objection relied on in the latter case. See also *Reg.* v. *Bourchier*, 2 Q. B. 641; 2 G. & D. 737, ante, p. 192.

A borough, though chartered by the Crown under this section, and having a grant of quarter sessions, could not, under this statute, contract with the justices of the next county or division for the maintenance of borough prisoners in their house of correction, under stat. 5 Geo. 4, c. 85, s. 1, and 5 & 6 Will. 4, c. 76, s. 114, if such borough never had a gaol of its own. See ante, p. 211, note. But see now 5 & 6 Vict. c. 98, post, empowering boroughs to do so.

The expenses of and in relation to a charter of incorporation of a borough, and all elections, acts, and proceedings under the same, may now be paid out of the borough rate. 13 & 14 Vict. c. 42, s. 3, post.

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borough be or be not a corporate town or borough, or be or be not named in either of the schedules to the said Act: Provided nevertheless, that notice of every such petition, and of the time when it shall please his Majesty to order the same to be taken into consideration by his privy council, shall be published in the London Gazette one month at least before such petition shall be so considered, but such publication shall not need to be by royal proclamation.

5 & 6 Will. 4, c. 76, s. 141.

Business to be transacted at general or quarter sessions for the counties, &c. in which boroughs are situate.

L. And be it further enacted, that in all boroughs and places where general or quarter sessions of the peace have under and by virtue of the said recited Act ceased or been discontinued to be holden, all such business, matters, and things which, under or by virtue of any general or local Act of Parliament, or any usage or custom, ought or were usually heard, decided, or transacted at such general or quarter sessions by the justices of the peace, with the assistance of any juries there assembled, shall and may hereafter be heard, decided, and transacted by the general or quarter sessions of the peace for the counties, ridings, or divisions, liberties or jurisdictions in which such boroughs are situate, and by the justices of the peace and juries there assembled respectively.

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MUNICIPAL RATES ACT.

7 WILL. 4 & 1 VICT. CAP. 81.

An Act to provide for the levying of Rates in Boroughs and Towns having Municipal Corporations in England and Wales.

[17*th July*, 1837.]

WHEREAS, by an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, authority was given to the council of any borough in certain cases to levy a borough rate*, and in certain other cases to levy a watch rate, and the same powers and authorities were thereby given to them for that purpose as by law are given to justices of the peace at sessions with respect to a county rate: And whereas no authority is thereby given to the churchwardens or overseers of the poor of any parish or place, or other persons, who may thereby be legally ordered to pay or levy such rate, to pay the same out of the poor rate of such respective parishes or places, or otherwise to levy the same upon the inhabitants thereof(1); Be it therefore enacted by the Queen's most

5 & 6 WILL. 4, c. 76.

* § 92.

(1) This Act was passed in consequence of the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, having omitted (in s. 92) to extend to borough rates some of the provisions of the 55 Geo. 3, c. 51, respecting county rates.

By the 12th section of this last-mentioned Act (now re-

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excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Com-

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pealed by 15 & 16 Vict. c. 81), three distinct powers were given. 1st, The power of the justices in sessions to make the rate, and to issue warrants for its collection by the high constable; secondly, the power given to the justices out of sessions to issue a warrant for the levy of the rate upon the goods of any overseer, &c. refusing to pay the assessment to the high constable; and, thirdly, the power to the overseers, or persons appointed to act as such, to levy by rate the sums assessed, or to reimburse themselves, by a special rate, such sums as they shall have paid on account of the county rate.

But the 92nd section of the Municipal Corporation Act, though it gives the same powers to the council to make the rate, and confers upon the mayor the power of levying by distress the assessment upon the overseers and other collectors of rates, makes no *express* provision authorising the overseers of the poor to pay such assessment out of the poor rates, or to make any special rate to reimburse themselves the amount paid over to the borough rate; and doubts having arisen whether, in the absence of any such express provision, the overseers would be justified in so applying the rates in their hands, or in levying a special rate to reimburse themselves, according to the provisions of the County Rate Act, this statute was passed; the first section of which, after reciting that no authority was given by 5 & 6 Will. 4, c. 76, to the churchwardens, overseers, or other persons who might thereby be legally ordered to pay or levy such rates, to pay the same out of the poor rate of such parishes or places, or otherwise to levy the same upon the inhabitants thereof, authorised the council to order the overseers to pay the assessment of the borough rate out of the poor rate, or to make and collect a pound rate for the purpose.

And then, inasmuch as this provision would not apply to extra-parochial places, or to parishes or townships *partly within and partly without the borough*, the third section expressly provided for such cases, and thus the borough rate

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mons, in this present Parliament assembled, and by the authority of the same, that in all cases where by the said Act or by this Act a borough rate or watch rate may be made and levied in any borough, the council of such borough may order(2) the churchwardens and overseers of every parish or place within which such rate may be levied, or such other persons as by law may make a poor rate for any such parish or place within the limits of such borough, to pay the amount of such part and portion of such rate for which such parish or place respectively shall be liable out of the poor rate made and collected or to be made or collected for such parish or place; or the said council, instead of ordering such churchwardens and overseers or other persons to pay the same out of the poor rate, may order them to make and collect a certain pound rate upon and from the occupiers or possessors of all rateable property within such parish or place, for the amount of the rate for which such parish or place may be liable as afore-

Payment of watch rates.

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and county rate appeared to be placed on the same footing for the future, in respect of extra-parochial places and divided parishes. However, the case of divided parishes and places is now further provided for by the 12 & 13 Vict. c. 65, by the 6th section of which, so much of this Act as applies to the making, levying, and collecting the county and borough rate in divided parishes or places is repealed, except as to rates theretofore made, &c.

See the judgment of *Tindal*, C. J., in *Fernley* v. *Worthington*, 1 Man. & G. 491.

(See ante, pp. 170, 357.)

(2) This order need not be made *in public*. *Jones* v. *Johnson*, 5 Exch. 862.

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said (3); and if such churchwardens, overseers, and other persons, upon being so ordered to pay such rate out of the poor rate, or to make and collect a pound rate as aforesaid, shall refuse or neglect to do so, the amount thereof may be made and levied off the goods of them or any of them by distress, by virtue of a warrant in that behalf under the hand and seal of the mayor of such borough or of any two justices of the peace in and for the same (4); or if any person liable to pay such pound rate shall neglect or refuse to pay the same, the amount thereof

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(3) The order of the Council upon an overseer, under this section, directed him to pay the proportion of the borough rate assessed upon his parish out of the poor rates *made and collected* for the parish. The Council also issued a warrant to the treasurer of the borough (analogous to the warrant to the high constable under the County Rate Act, 55 Geo. 3, c. 51, s. 12) commanding him, within 100 days from the *date thereof*, to demand from the overseer the said proportion. The treasurer, on the same day, issued his precept to the overseer, requiring him, within 100 days after the *receipt thereof*, to pay the said proportion out of the poor rates made and collected, *or to be made and collected*, for his parish. This precept was held to be sufficient, notwithstanding the above variances from the order. *Jones* v. *Johnson*, 5 Exch. 862.

(4) A warrant under this section was issued by three justices, one of whom was the mayor of the borough. It contained the venue in the margin, and directed a certain sum to be levied by distress of the overseer's goods, and provided that "if within the space of five days next after such distress by you taken, the sum of &c., shall not be paid, *then* you do sell the said goods," &c.: and it concluded thus: "Given under our hand and seal, and under the corporate seal of the said borough and city. T. T. (L. S.), M. B. M. (L. S.), Justices of the said borough and city. Thomas (corporation seal) John-

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may be levied upon his goods by distress in like manner.

Council of borough empowered to levy a rate for carrying former Act into execution.

II. And be it enacted, that it shall be lawful for the council of any such borough, at any time within six calendar months next after the passing of this Act, to make and levy a borough rate for the purpose of defraying any expenses incurred before the passing of this Act in putting in execution the provisions of the said Act for regulating corporations; and every such rate shall be made, levied, and recovered in the manner provided by the said Act for regulating corporations and by this Act(1.)

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son, Mayor." Mr. Johnson was not stated in the *body* of the warrant to be the mayor.

Held, in an action of replevin against the justices for the goods taken under a distress by virtue of this warrant, 1st. that it sufficiently appeared upon the warrant that Johnson was mayor of the borough at the time of making it; 2nd. that the warrant sufficiently appeared to have been issued within the jurisdiction of the mayor and justices, as the venue in the margin might be looked at for that purpose; 3rd. that it was sufficient within the 27 Geo. 2, c. 20, though it did not expressly fix the time for the termination of the sale. *Jones* v. *Johnson*, 5 Exch. 862.

(1) This section was introduced into the Act in consequence of the decision in *Woods* v. *Reed*, 2 M. & W. 777 (which see ante, p. 169), that the borough rate could not be made for defraying any past expenses.

In *Reg.* v. *Recorder of Ipswich*, 8 Dowl. P. C. 103, it was decided that no appeal lay to the sessions against a rate made under this section. An appeal lies only where it is given by statute, and none is here mentioned: against a rate, however, made under s. 92 of the Municipal Corporation Act, an appeal is expressly granted. See ante, p. 172.

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Regulating the collection of borough and county rates in divided places.

III. Provided always, and be it enacted, that in every case in which any parish or place liable to support its own poor shall be partly within and partly without any such borough(1), and in the case of every extra-parochial place wholly or partly within any such borough, the council of the borough shall appoint one or more proper person or persons to act as overseer or overseers within that part of such parish or any such place which is within the borough, for making, levying, and collecting any such borough rate or watch rate therein; and in every such case of a divided parish or place, if the borough is not liable to the county rate, the justices of the peace having jurisdiction over that part of such parish or place which is not within the borough, shall appoint one or more proper person or persons to act as overseer or overseers within that part of such parish or place which is not within the borough, for making, levying, and collecting the county rate therein(2); and the person or persons so respectively to be appointed shall have the like powers vested in him or them, and shall be subject to the same regulations and penalties, for levying and collecting any such borough rate, watch rate, or county rate within that part of such parish or place for which he or

Case of divided parish.

(1) See note to s. (1) of this Act, and *Fernley* v. *Worthington*, 1 Man. & G. 491, there cited.

(2) The person appointed an overseer under this section is not one of the borough officers who are to be appointed "in every year," under the 5 & 6 W. 4, c. 76, c. 58: whether he can be appointed for an indefinite time, during the pleasure of the council, *quære*. *Mayor &c. of Birmingham* v. *Wright*, 16 Q. B. 623.

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they is or are appointed, as if he or they was or were appointed overseer or overseers of the poor under any law or laws now or hereafter to be in force(3).

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(3) The town-council of a borough made an order for the making of a borough rate on the several parishes, &c. within the borough, and that the proportion thereby assessed on that part of the parish of S. which lay within the limits of the borough should be 365*l.*: that the churchwardens, &c. should *levy, collect, and pay* the amounts assessed on their respective parishes, &c. and that a warrant under the corporate seal should be directed to the town-clerk, authorising him to demand, collect, and receive the amounts so rated, and for that purpose to issue his warrants to the churchwardens, &c. requiring them to *levy, collect, and pay* the same amounts, &c. A warrant was accordingly issued to the town-clerk, directing him to demand, collect, and receive the amounts rated; and he issued his precept to the special overseer, who had been previously appointed under this section, for that part of the parish of S. which lay within the limits of the borough, requiring him "to levy, collect, and pay, by a fair and equal rate, the sum of 365*l.*," &c. It was held that the order of the town-council authorised the overseer, under this precept, to *make* a rate for that purpose. *Cobb* v. *Allan*, 10 Q. B. 683.

The overseer cannot make a rate for a larger sum in the pound than that specified in the order of the council; even (as it seems) though it appear that the amount for which it is actually made was necessary to raise the sum required by the order, after allowance for empty houses and insolvent occupations. *Reg.* v. *Mayor &c. of New Windsor*, 7 Q. B. 908; *Cobb* v. *Allan*, supra.

See ante, 7 Will. 4 & 1 Vict. c. 78, s. 29; and post, 8 & 9 Vict. c. 110, and 12 & 13 Vict. c. 65; and as to gaol rates, 5 & 6 Vict. c. 98, s. 7.

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MUNICIPAL DECLARATIONS ACTS.

1 & 2 VICT. CAP. 5.

An Act for the Relief of Quakers, Moravians, and Separatists elected to Municipal Offices.

[23*rd December*, 1837.]

WHEREAS in consequence of the conscientious scruples of persons of the persuasion of the people called Quakers, of Moravians, and Separatists, the declaration prescribed by an Act of the ninth year of King George the Fourth, intituled *An Act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments*, on accepting office in municipal corporations, operates as a practical grievance, and to a certain extent as a disfranchisement of persons under the influence of those scruples, to the manifest detriment of themselves and their fellow subjects; And whereas no mischief or inconvenience is likely to arise from affording such relief in relation to these matters, as is hereinafter mentioned; Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that instead of the declarations required to be subscribed in the recited Act of the ninth year of

9 Geo. 4, c. 17.

Instead of the declaration required

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King George the Fourth, and in an Act of the fifth and sixth years of King William the Fourth, intituled *An Act for the Regulation of Municipal Corporations in England and Wales*, respectively, every person of the persuasion of the people called Quakers, and every Moravian and Separatist, entertaining such conscientious scruples as aforesaid, be permitted to make the following declaration on accepting office in any municipal corporation as mayor, alderman, or councillor (1) :— by 9 Geo. 4, c. 17, and 5 & 6 Will. 4, c. 76, s. 30, the following declaration to be made.

"I, A. B., being one of the people called Quakers [*or* one of the persuasion of the people called Quakers, *or* of the United Brethren called Moravians, or of the denomination called Separatists, *as the case may be*], having conscientious scruples against subscribing the declaration contained in an Act passed in the ninth year of the reign of King George the Fourth, intituled *An Act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments*, do solemnly, sincerely, and truly declare and affirm, that I will not exercise any power or authority or influence which I may possess by virtue of the office of to injure or weaken the Protestant church as it is by law established in England, nor to disturb the said church, or the bishops and clergy of the said church, in the possession of any right or privileges Declaration.

(1) See ante, 6 & 7 Will. 4, c. 104, s. 8, relieving these persons from liability to fine for non-acceptance of office, under s. 51 of the Municipal Act.

See the next statute, extending further relief.

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to which such church or the said bishops and clergy may be by law entitled."

Such declaration to be of the same force as that in 9 Geo. 4, c. 17.

II. And be it enacted, that such affirmation or declaration shall be of the same force and effect as if the person making it had made or subscribed the declarations aforesaid as contained in the said Act of the ninth year of the reign of King George the Fourth and the fifth and sixth years of King William the Fourth respectively.

1 & 2 VICT. CAP. 15.

An Act for the further Relief of Quakers, Moravians, and Separatists.

[30*th March*, 1838.]

1 & 2 Vict. c. 5.

WHEREAS by an Act passed in this present session of Parliament, intituled *An Act for the Relief of Quakers, Moravians, and Separatists elected to Municipal Offices*, it is enacted, that every person of the persuasion of the people called Quakers, and every Moravian and Separatist, entertaining conscientious scruples against making and subscribing the declaration prescribed by the Act of the ninth year of the reign of his late Majesty King George the Fourth, intituled *An Act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments*(1), may, on

9 Geo. 4, c. 17.

(1) See 9 Geo. 4, c. 17, post, in the Appendix.

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accepting office in any municipal corporation as mayor, alderman, or councillor, instead of making such declaration, be permitted to make the declaration in the said Act of this present session mentioned; And whereas the relief given by the said last-mentioned Act may safely be extended in manner hereinafter mentioned: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that every person being of the persuasion of the people called Quakers, or being a Moravian or Separatist, and entertaining such conscientious scruples as aforesaid, who has been or shall be placed, elected, or chosen in or to the office of recorder, bailiff, town clerk, or common councilman, or any office of magistracy, or place, trust, or employment relating to the government of any city, corporation, borough, or cinque port within England and Wales, or the town of Berwick-upon-Tweed, or who has been or shall be admitted into any office or employment, or has accepted or shall accept from her Majesty, her heirs or successors, any patent, grant, or commission, may, instead of making and subscribing the declaration prescribed by the said Act of the ninth year of the reign of his said late Majesty King George the Fourth, make and subscribe the declaration contained in the said Act of this present session of Parliament; and every such person so making and subscribing such last-mentioned declaration shall have the same rights, powers, and authorities which he would have had if he had made and subscribed the declaration contained in the said Act of the ninth

Instead of the declaration required by the Act of 9 Geo. 4, c. 17, that contained in the Act of the present session may be taken by Quakers, Moravians, or Separatists elected to office in any corporation.

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year of the reign of his said late Majesty King George the Fourth: Provided always, that every declaration to be made by virtue of this Act shall be made and subscribed before the same person or persons, or court, and within the same time, and shall be preserved in the same manner, as by the said Act of the ninth year of the reign of his said late Majesty King George the Fourth is directed as to the declaration therein mentioned (2).

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(2) See 8 & 9 Vict. c. 52, post, for the declaration to be made by *Jews* on their admission to municipal offices.

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MUNICIPAL CHURCH PATRONAGE ACT.

1 & 2 VICT. CAP. 31.

An Act for facilitating the Sale of Church Patronage belonging to Municipal Corporations in certain Cases. [*4th July*, 1838.]

WHEREAS, by an Act passed in the session of Parliament holden in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales* (as the same Act is altered by another Act passed in the then next session of Parliament, intituled *An Act for carrying into effect the Reports of the Commissioners appointed to consider the State of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage*), it is enacted, that in every case in which any municipal body corporate, or any particular class, number, or description of members, or the governing body of such body corporate, is or are, in their corporate capacity, and not as charitable trustees, seised or possessed of any manors, lands, tenements, or hereditaments whereunto any advowson or right of nomination or presentation to any bene-

5 & 6 Will. 4, c. 76, s. 139.

6 & 7 Will. 4, c. 77, s. 26.

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fice or ecclesiastical preferment is appendant or appurtenant, or of any advowson in gross, or hath or have any right or title to nominate or present to any benefice or ecclesiastical preferment, every such advowson, and every such right of nomination and presentation, shall be sold, at such time and in such manner as the ecclesiastical commissioners for England may direct, so that the best price may be obtained for the same; and the council of such body corporate is authorised and required, with the consent of the said commissioners, to convey and assure, under the common seal of such body corporate, such advowson, or such right of nomination or presentation, to the purchaser or purchasers thereof: And whereas in some instances the manors, lands, tenements, or hereditaments whereof some municipal corporations are seised were granted to them with an obligation to nominate, provide, and sustain in certain churches or chapels able and fit priests, curates, preachers, or ministers for the performance and administration of ecclesiastical duties and rites therein, and for the cure of the souls of the parishioners and inhabitants of the parishes or places thereunto belonging; and although such corporations have from time to time duly nominated and provided such priests, curates, preachers, or ministers, and paid stipends for their sustenance, and have either provided houses for their residence or made allowances in lieu thereof, yet such stipends and allowances have not been fixed or assured by any competent authority; and for want of any regular endowment or augmentation of such curacies they have not become perpetual cures, or benefices

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presentative, and the curates have not become bodies politic and corporate, within the meaning of an Act passed in the first year of the reign of his Majesty King George the First, intituled *An Act for making more effectual her late Majesty's gracious Intentions for augmenting the Maintenance of poor Clergy*, and of an Act passed in the thirty-sixth year of the reign of his Majesty King George the Third, intituled *An Act for the further Support and Maintenance of Curates within the Church of England, and for making certain Regulations respecting the Appointment of such Curates, and the Admission of Persons to Cures augmented by Queen Anne's Bounty, with respect to the Avoidance of other Benefices;* by reason whereof doubts have arisen whether the right of nominating ministers to such churches and chapels can be sold under the provisions of the said first hereinbefore recited Act; and it is expedient that such doubts should be removed (1): Be it therefore

1 Geo. 1, c. 10, s. 54.

36 Geo. 3, c. 83, s. 3.

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(1) By a grant of the 6th of James I., the tithes, &c. of the lordship of Bury St. Edmund's were conveyed to the aldermen and burgesses of that place, subject to the payment of 8*l.* 10*s.* yearly thereout to the curates and ministers of the two parish churches of Bury St. Edmund's, St. Mary's and St. James's. By a subsequent grant of 12 James I., the king, after stating his expectation that the aldermen and burgesses of Bury St. Edmund's would provide able and fit ministers and preachers of the word, and other officers of the churches aforesaid necessary, at all times to come, granted to the aldermen and burgesses and their successors the whole and entire rectories and vicarages of Bury St. Edmund's, and the said parish churches of St. Mary and St. James, and all rights and patronage of the same, and all the tithes, both greater and less, and all

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declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this

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other rights to the same belonging, to be held by them as freely and fully as the late abbot of the monastery [of Bury St. Edmund's] then lately dissolved, or any other his predecessors, had held the same. Under these grants *the corporation made no endowment, nor did they give any fixed stipend* to the ministers in either of the churches; but two persons were appointed to do the duties in each parish, the one called the *preacher* or *lecturer*, the other the *curate* or reader, the former being remunerated by a salary agreed upon from time to time between himself and the corporation, the latter by the surplice fees and Easter offerings. The office of curate or reader of St. James's having become vacant before any sale had been effected by the corporation, it was held that the right of presentation or nomination to such office fell within the provisions of 1 & 2 Vict. c. 31, and consequently that such right, in the case of a vacancy before sale, was vested in the bishop of the diocese, under the proviso in 5 & 6 Will. 4, c. 76, s. 139. *Hine* v. *Reynolds*, 2 Scott's New Rep. 394; 2 Man. & G. 71.

It was contended, amongst other points raised in the above case, that though this section made such a curacy as the above saleable, still it was not till *after the sale* that such a curacy was to become a "benefice presentative;" and even assuming it to be within this Act, it would not be brought within the provisions of the Municipal Act, and the proviso at the end of the 139th section of that Act, as to the right of presentation in the case of vacancy before sale. On this point, *Tindal*, C. J., in delivering the judgment of the court, observed: "We think the necessary consequence of holding it within the statute of Victoria is to bring it within the 139th section of the Municipal Corporation Act, and we consider the case the same as if the descriptive words of the latter statute (1 & 2 Vict. c. 31) had been actually inserted in the 139th section of the former Act, and had formed part of that section."

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present Parliament assembled, and by the authority of the same, that every right of nomination of every such priest, curate, preacher, or minister, which at the time of the passing of the first hereinbefore recited Act was vested in any municipal corporation, or in any member of such corporation in virtue of his office as such, shall and may be sold, at such time and in such manner as the said commissioners may direct, and shall by such conveyance or assurance as is in the said first-recited Act mentioned become vested in the purchaser thereof, his heirs and assigns; and that from and after such sale and assurance every such curacy, preachership, or ministry shall become a benefice presentative within the meaning of the said recited Act of the thirty-sixth year of the reign of King George the Third; and every such curate, preacher, or minister, and his successors for ever, shall become and be a body politic and corporate within the meaning of the said recited Act of the first year of the reign of King George the First, and shall have perpetual succession, and shall be capable of taking and holding in perpetuity all such lands, tithes, tenements, hereditaments, monies, goods, and chattels, as shall be granted unto or purchased for them respectively by the governors of the bounty of Queen Anne, or by other persons contributing with the said governors as benefactors; and every such purchaser, his heirs and assigns, may present to such benefice, from time to time when and as the same shall become vacant, in the same manner to all intents and purposes as patrons may now present to benefices presentative.

Right of nomination vested in municipal corporations may be sold.

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Notwithstanding any sale, the property to be liable to same obligations as previous thereto.

II. And be it enacted, that notwithstanding any such sale and conveyance as aforesaid, every such corporation, and the property belonging thereto, shall continue liable to the same obligations (if any) of providing for and maintaining or contributing to the maintenance of any such priest, curate, preacher, or minister, to which such corporation and property would have been liable if no such sale and conveyance had taken place; and such liability (if any) may be enforced by the same means, at the instance of her Majesty, her heirs or successors, or otherwise, as if the first herein-before recited Act had not been passed, and the right of nominating such priest, curate, preacher, or minister had remained vested in such corporation.

Municipal corporations may augment and endow priestships, &c., as heretofore.

III. Provided always, and be it hereby further enacted, that nothing in this Act or in the said first-recited Act contained shall preclude any municipal corporation seised of any manors, lands, tenements, or hereditaments, subject to an obligation to nominate and provide any such priest, curate, preacher, or minister, from augmenting and endowing such priestship, curacy, preachership, or ministry, either by the assigning of a competent portion of such manors, lands, tenements, or hereditaments to such priest, curate, preacher, or minister, and his successors, or by charging thereon an annual stipend, either in money or in kind, for his and their use and benefit, in as full and ample manner as such corporation might have done before the passing of the said first recited Act: Provided always, that no such augmentation or endowment shall be valid

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without the consent of the lords commissioners of her Majesty's Treasury or any three of them.

IV. And be it enacted, that this Act shall be deemed and taken to apply as well to sales already made, and to sales now in progress, as also to sales which shall hereafter be made.

Act to apply to previous, present, and future sales.

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STAMP-DUTY ON FREEMEN'S ADMISSION ACT.

1 & 2 VICT. CAP. 35.

An Act to repeal the Stamp Duty now paid on Admission to the Freedom of Corporations in England. [*4th July*, 1838.]

WHEREAS the right and privilege of the freemen of the cities and boroughs in England, who have acquired their freedom by birth or servitude, to vote for members to serve in Parliament, have been confirmed by divers statutes; it is expedient that all impediments to the admission of persons entitled to the freedom of corporations should be removed, and that the stamp-duty payable on such admission should be abolished: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that after the passing of this Act no stamp-duty shall be chargeable on the admission of any person entitled to take up his freedom by birth or servitude in any city or borough in England returning a member or members to serve in Parliament (1).

No stamp-duty chargeable on admission of freemen in cities or boroughs.

(1) See ante, ss. 2, 3, 4, and 5, of 5 & 6 Will. 4, c. 76.

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BOROUGH COURTS ACT.

2 & 3 VICT. CAP. 27.

An Act for regulating the Proceedings in the Borough Courts of England and Wales.

[19*th July*, 1839.]

WHEREAS great difficulty has been found in framing legal and convenient rules for regulating the practice of borough courts under the authority given for that purpose by an Act passed in the session holden in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, and by an Act passed in the session holden in the sixth and seventh years of the same reign, intituled *An Act for the better Administration of Justice in certain Boroughs*; and it is expedient that the power to make rules for regulating the proceedings of such courts, subject to the approbation and confirmation of the judges of the superior Courts of common law at Westminster, should be explained and in some respects enlarged: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in every borough named in the schedules A. and B. to the first hereinbefore

5 & 6 Will. 4, c. 76, s. 118.

6 & 7 Will. 4, c. 105, s. 9.

Judges of courts of record in bo-

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Boroughs empowered to make, &c. rules for regulating the times of holding and forms of practice in said courts.

mentioned Act annexed, in which by charter, custom, or otherwise, there is or ought to be holden a court of record for the trial of civil actions, *every judge of such court* (1) shall have authority to make, alter, and revoke such rules for appointing the times of holding such court, for regulating the forms and manner of proceeding, the process, appearance, practice, and pleadings in such court, and for settling the reasonable fees of the attornies of the court for business transacted therein (2), as shall from time to time seem to him necessary and proper for expediting the business of such court with most convenience, and at the smallest possible reasonable expense: Provided always, that no such rules, or any order revoking or altering such rules, shall be of any force until they shall have been allowed and confirmed by three of the judges of the superior Courts of common law at Westminster.

Such rules to be confirmed by three judges.

Courts to be held four times yearly.

II. Provided also, and be it enacted, that every such court shall be holden for the trial of issues of fact and of law four times at least in each year, and with no greater interval between the holding of any two successive courts than four calendar months (3).

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(1) See ante, 6 & 7 Will. 4, c. 105, s. 9. And see in the Appendix, Portsmouth Borough Court Rules.

(2) The fees to be taken by the registrar and the officers of the court of record are to be fixed by the town council, subject to the approval of one of her Majesty's principal secretaries of state. See 5 & 6 Will. 4, c. 76, s. 124, p. 224.

(3) See ante, 6 & 7 Will. 4, c. 105, s. 9.

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III. And be it further enacted, that from and after the first day of September next all personal actions brought in the borough courts of England and Wales shall be commenced by writ of summons. Personal actions to be by summons.

MUNICIPAL WATCH RATES ACT.

2 & 3 VICT. CAP. 28.

An Act for more equally assessing and levying Watch Rates in certain Boroughs.

[19*th July*, 1839.]

WHEREAS, by reason of the restrictions contained in an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, the watch rate authorised by the said Act to be levied upon those parts of the boroughs within the provisions of the said Act which are regularly watched is insufficient for that purpose, and the deficiency in many cases is paid out of the borough rate, to which all parts of the borough, whether or not regularly watched, are liable: For remedy thereof be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority

5 & 6 Will. 4, c. 76, ss. 84—92.

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Watch rate may be levied not exceeding 6d. in the pound, or in certain cases the average rate.

of the same, that, after the passing of this Act it shall be lawful for the council of any borough named in either of the schedules to the said Act to levy a watch rate upon the occupiers of all messuages, lands, tenements, and hereditaments within those parts of the borough which shall be watched by day and by night, and which from time to time, by any order of the council of any such borough, shall be declared liable to such watch rate; and every such rate shall be made upon an estimate of the net annual value of the several hereditaments rated thereunto, that is to say, of the rent at which, one year with another, the same might in their actual state be reasonably expected to let from year to year, the probable annual average cost of the repairs, insurances, and other expenses (if any) necessary to maintain the hereditaments in their actual state, and all rates, taxes, and public charges, except tithes or tithe commutation rent-charges (if any), being paid by the tenant, and either by one rate made yearly, or by two or more rates made half-yearly, or otherwise: Provided always, that no such rate shall exceed, in any one year, the rate of sixpence in the pound on the net annual value of the hereditaments rated thereunto, unless in those boroughs in which, at the time of passing the said Act, the sum authorised by the said Act to be levied by way of watch rate exceeded the sum which might have been then raised by the said rate of sixpence in the pound (1); and

(1) See 3 & 4 Vict. c. 28, s. 2, post, p. 405, which provides that the amount of the rate is to be *discretionary* with the council; but it must not exceed 6*d*. in the pound.

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in such cases as last aforesaid it shall be lawful to levy a watch rate under this Act upon all the hereditaments liable thereunto, at such rate as would have sufficed to raise such greater sum: Provided also, that nothing herein contained shall be construed to extend to either of the Universities, so as to make the members thereof liable to pay to any rate to be made in pursuance of this Act to which the said Universities or the members thereof were not liable to contribute before the passing of this Act nor shall be deemed to affect the liability of the borough fund to make good any deficiency of the watch rate towards the expenses of the police, should any such deficiency arise, nor to make liable to the watch rate any lands, tenements, or hereditaments which are now exempted by any local Act from the payment of watch rates, or to alter the comparative liability of any lands, tenements, or hereditaments to the watch rate, which by any local Act are now, in respect of any watch rate, entitled to any deduction from or chargeable with any increase upon an equal pound rate; but the like comparative deductions and increased charges shall be made in respect of such hereditaments in the rates to which such hereditaments shall be rated under this Act.

Rights of Universities preserved.

II. And be it enacted, that, for the purposes aforesaid, the council of every such borough, and all other persons interested or concerned therein, shall have all the powers heretofore given to them respectively in the matter of the borough rate and watch rate or either of them, by the said Act, or by any other subsequent Act, for ordering, making, assessing,

As to the powers of the council of any borough.

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levying, raising, collecting, or paying the same, or as near thereto as the nature of the case will admit.

WATCH-RATES ACT AMENDMENT ACT.

3 & 4 VICT. CAP. 28.

An Act to explain and amend an Act of the Second and Third Years of her present Majesty, for more equally assessing and levying Watch Rates in certain Boroughs. [23*rd July*, 1840.]

WHEREAS, by an Act passed in the session of Parliament holden in the second and third years of the reign of her present Majesty, intituled *An Act for more equally assessing and levying Watch Rates in certain Boroughs*, after reciting therein that by reason of the restrictions contained in an Act passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, the watch rate authorised to be levied upon those parts of the boroughs within the provisions of the said Act which were regularly watched was insufficient for that purpose, and the deficiency in many cases was paid out of the borough rate to which all parts of the borough, whether or not regularly watched, were liable; for remedy there-

2 & 3 Vict. c. 28.

5 & 6 Will. 4, c. 76.

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of it was enacted, amongst other things, that it should be lawful for the council of any borough named in either of the schedules to the said Act of his late Majesty, to levy a watch rate upon the occupiers of all messuages, lands, tenements, and hereditaments within those parts of the borough which should be watched by day and by night, and which from time to time, by any order of the council of any such borough, should be declared liable to such watch rate, provided that no such rate should exceed in any one year the rate of sixpence in the pound on the net annual value of the hereditaments rated thereunto, unless in those boroughs in which at the time of passing the said Act of his late Majesty the sum authorised to be levied by way of watch rate exceeded the sum which might have been then raised by the said rate of sixpence in the pound: And whereas the said Act of her present Majesty was intended to apply to boroughs in which, from the deficiency of the borough fund, it had become or might become necessary that borough rates should be laid; but doubts have been entertained whether the same Act may not apply to cases of municipal boroughs in which there are borough funds sufficient for the purposes of defraying the expenses of the constabulary force of such boroughs, together with all other expenses payable out of the borough fund, with the aid of the amount only of watch rate which could be raised under the provisions of the said Act of his said late Majesty, and without the aid of any borough rate; and doubts are also entertained whether by the said Act of her present Majesty it is not imperative upon the council of each borough to levy

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in each borough a watch rate to the extent of sixpence in the pound; and in order to remove such doubts, Be it enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that after the passing of this Act the said Act of her present Majesty shall not apply or be deemed to apply to any borough in which the borough fund is sufficient, with the aid of the amount only of watch rate, which could be raised under the provisions of the said Act of his late Majesty, and without the aid of any borough rate, to defray the expense of the constabulary force of the borough, together with all the other expenses legally payable out of the borough fund, by virtue of the said Act of his late Majesty, or any other Act or Acts of Parliament: Provided always, that nothing in this Act contained shall be deemed to take away or lessen, or to vary or affect, the particular benefit or rights to common lands and public stock, and to lands, tenements, and hereditaments, and to the rents and profits thereof, or to any sum or sums of money, chattels, securities for money, or other personal estate, which are reserved by the said recited Act* of his late Majesty to every person who then was or thereafter might be an inhabitant of any borough, and also to every person who had been admitted, or who might thereafter have been admitted, a freeman or burgess of any borough if that Act had not been passed, or who then was or thereafter might be the wife or widow, or son or daughter, of any freeman or burgess, or who had espoused or

Recited Act not to apply to boroughs in certain cases.

Proviso.

* See 5 & 6 Will. 4, c. 76, s. 2.

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might thereafter espouse the daughter or widow of any freeman or burgess, or who had been or might thereafter be bound an apprentice: Provided also, that nothing herein contained shall render the borough fund of any borough liable to any expenses with which such borough fund was not chargeable before the passing of the said recited Act of her present Majesty.

Limiting amount of watch rate to be annually levied.

II. And be it enacted and declared, that the amount of watch rate to be levied by the council of any borough, under the authority of the said recited Act of her present Majesty, shall be at the discretion of each such council, but not exceeding in any one year the sum of sixpence in the pound, as limited by the same Act.

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CORPORATIONS RATING ACT.

4 & 5 VICT. CAP. 48.

An Act to render certain Municipal Corporations rateable to the Relief of the Poor in certain Cases.

[21*st June*, 1841.]

WHEREAS the municipal corporations of cities and boroughs named in the schedules (A.) and (B.) annexed to the Act passed in the sixth year of the reign of King William the Fourth, to provide for the regulation of municipal corporations in England and Wales, have been held not to be liable by law to be rated to the relief of the poor in respect of any lands, tenements, and hereditaments being the properties and in the occupation of such municipal corporations, by reason that the income arising therefrom is applicable to public purposes only; and it is expedient that such municipal corporations should nevertheless in some cases be rateable and be rated to the relief of the poor in respect of such property: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said municipal corporations named in the said schedules shall, from and after the passing of this Act, be rateable and be rated to the relief of the poor in respect of lands, tenements, and hereditaments being the

Certain municipal corporations rated to the poor.

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property and in the occupation of such municipal corporations, as if such lands, tenements, and hereditaments were not corporate property, any law, usage, or custom to the contrary notwithstanding: Provided always, that where such property lies in any parish which is situate wholly within the boundaries and limits of a city or borough named in the said schedules, and in which city or borough the poor are relieved by one entire poor rate, or in which city or borough the poor within the boundaries or limits thereof as existing for municipal purposes at the time of passing the said Act were then relieved by one entire poor rate, the exemption of such property from rateability shall continue as if this Act had not passed.

Proviso, exempting certain property.

II. And be it enacted, that any of the said municipal corporations, being in the occupation of such lands, tenements, and hereditaments as are hereinbefore described, shall be deemed and taken to be beneficial occupiers thereof, for all the purposes of rating, as if such occupation was for their own private advantage, and not for any public purposes or purpose, and shall be liable to be rated as such occupiers by their corporate style and title (1).

Said corporations to be deemed beneficial occupiers.

(1) This Act was passed in consequence of the decisions in *Reg.* v. *Mayor &c. of Liverpool*, 9 A. & E. 435, 1 P. & D. 334; and *Reg.* v. *Inhabitants of Exminster*, 12 A. & E. 2, 4 P. & D. 69; which see ante, p. 160, in the notes to s. 92 of 5 & 6 Will. 4, c. 76.

As to the rateability of corporations to the poor-rate, see *Rex* v. *Mayor &c. of York*, 6 A. & E. 418, and the authorities there cited.

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DISTRICT COURTS AND PRISONS ACT.

5 & 6 VICT. CAP. 53.

An Act to encourage the Establishment of District Courts and Prisons (1).

[30*th July*, 1842.]

WHEREAS a good system of prison discipline can be carried into effect most easily and at the least cost by the establishment of large prisons; and it is expedient to encourage the building of district prisons, for the common use of one or more boroughs, and any adjacent district of a county: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for the justices of the peace of any county, and for the mayor, aldermen, and burgesses of any borough which is within the provisions of an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, or of any charter granted in pursuance

Justices of any county, and of any borough within the provisions of 5 & 6 Will. 4, c. 76, may agree with other justices for building or enlarging prisons, to be used as

(1) See 4 Geo. 4, c. 64; 5 Geo. 4, c. 85; 7 Geo. 4, c. 64, s. 25; 5 & 6 Will. 4, c. 76, s. 114, ante, p. 209; 6 & 7 Will. 4, c. 105, s. 1, ante, p. 308; 7 Will. 4 & 1 Vict. c. 78, ss. 40—42, ante, p. 366—368; and 5 & 6 Vict. c. 98, and 11 & 12 Vict. c. 39, post.

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of that Act or of any Act passed for the amendment thereof, to agree, by their council, jointly or severally, with the justices of the peace of any one or more counties, or with the mayor, aldermen, and burgesses of any one or more such boroughs by their councils respectively, for the contribution and payment of any sum of money by either or any of the parties to any such agreement towards altering, enlarging, building, rebuilding, repairing, or improving any prison to be used as a district prison under the provisions hereinafter contained, and toward the expenses of the maintenance, safe custody, and punishment of the offenders committed thereunto, including their committal, prosecution, and conveyance to and from prison, and toward the expenses of providing and maintaining a court house and necessary buildings, and defraying the other charges of the court at which they shall be tried, including all salaries to be paid by either or any of the contracting parties; and it shall be lawful for any justice of the peace acting within his jurisdiction for any county or borough which is one of the parties to the agreement to commit to such prison all persons who shall be by law liable to be committed to prison for any act or omission done or omitted, or charged to be done or omitted, within the district set out or any borough specified in the agreement; and every person committed to any such prison may be tried, sentenced, and punished in like manner as if such prison were a gaol belonging to the county or borough from which such person was committed; and all the provisions of an Act passed in the fifth year of the reign of King George the Fourth, intituled *An Act for amending* 5 Geo. 4, c. 85.

district prisons.

Justices may commit alleged offenders to such prisons.

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an Act of the last Session of Parliament relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales, as amended by an Act passed in the seventh year of the reign of his late Majesty, intituled *An Act for the better Administration of Justice in certain Boroughs*, shall extend, as nearly as may be, to all such agreements, and to the trial and punishment of such offenders, and to all acts necessary for such trial, or consequent thereon, subject to the provisions hereinafter contained.

6 & 7 Will. 4, c. 105.

Repeal of enactments authorising agreements at quarterly meetings of council.

II. And be it enacted, that so much of any Act (1) as enacts that any such agreement shall be made by the council of any borough at a quarterly meeting of the council shall be repealed: Provided always, that nothing in this Act shall affect any contract entered into before the passing of this Act between any justices and the council of any borough.

Monies to be raised as other monies for like purposes.

III. And be it enacted, that all monies to be paid under any agreement authorised by this Act, for building, rebuilding, repairing, or enlarging any gaol, house of correction, court house, or other necessary buildings as aforesaid, shall be raised in the same manner and subject to the same conditions as monies to be raised by any justices, or by the council of any borough, for building, rebuilding, or enlarging

(1) See 5 & 6 Will. 4, c. 76, s. 116, ante, p. 213, and 1 Will. 4 & 1 Vict. c. 78, s. 37, ante, p. 362. See also 5 & 6 Vict. c. 98, s. 17, post.

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any gaol or house of correction under their management respectively; and all monies to be paid toward the current annual expenses of such gaol, house of correction, court house, or other necessary buildings as aforesaid, and toward defraying all other charges incurred by the contracting parties, or either or any of them, in carrying such agreement into effect, shall be raised in the same manner and subject to the same conditions as monies to be raised by the justices of any county, or the council of any borough, for defraying the ordinary current expenditure of their several gaols and houses of correction.

Justices in quarter sessions may appoint a committee of justices to make such agreements.

IV. And be it enacted, that it shall be lawful for the justices of the peace of any county in general or quarter sessions assembled, due notice having been previously given according to the practice of the said sessions, to take into consideration the expediency of making any such agreement as aforesaid with any of such parties aforesaid, and, if the justices then and there assembled shall resolve that it is expedient that such agreement should be made, to appoint not less than three and not more than five justices for the said county to be a committee for treating with any committee appointed by any other of the parties aforesaid, for the purposes aforesaid, and from time to time, at such quarter sessions, or at any adjournment thereof, to fill up any vacancy in the said committee by death, resignation, or otherwise; and every justice so appointed shall continue to be a member of the said committee for the period hereinafter specified, provided that he so long continue a justice of the peace for such county.

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Councils of boroughs may appoint a committee of justices to make such agreements.

V. And be it enacted, that it shall be lawful for the council of any such borough, at a special meeting to be called for that purpose, to take into consideration the expediency of making any such agreement as aforesaid with any of such parties as aforesaid, and, if the council shall resolve that it is expedient that such agreement should be made, to appoint not less than three and not more than five justices for such borough to be a committee for treating with any committee appointed by any other of the parties aforesaid for the purposes aforesaid, and from time to time at a quarterly meeting of the council to fill up any vacancy in the committee by death or resignation or otherwise; and every justice so appointed shall continue to be a member of such committee for the period hereinafter specified, provided that he shall so long continue a justice of the peace for such borough.

Committees to unite to form one committee.

VI. And be it enacted, that the committees so appointed shall be deemed to represent severally each of the contracting parties, and shall meet forthwith and form one joint committee for the despatch of business, and, due consideration being had of the relative position of the parties, the population, the amount of crime, the distance from any existing gaol, and all other matters bearing upon the subject of inquiry, shall set out the district or districts of such county or counties which it would be in their judgment expedient to unite together, or to any one or more such boroughs, for all or any of the purposes of this Act, and shall draw up an agreement touching the same; which shall distinctly set forth the extent to which the contracting parties

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intend to carry into execution the purposes aforesaid, or any of them, which agreement, when subscribed by the greater number of the justices severally representing each of the contracting parties, and approved and confirmed as hereinafter directed, shall be binding upon all the said parties to all intents and purposes.

Certain particulars to be stated in the agreement.

VII. And be it enacted, that every such agreement shall specify the place where such prison and other buildings are or are to be situated, and the district of the county or counties which it shall be proposed to unite with any other similar district, or with any one or more boroughs, for the purposes of this Act, the limits of such district being defined, and the area and population of the same, as well as of the several boroughs, being set forth as well as the same may be known; and such agreement shall further specify the number of prisoners for which it is proposed that accommodation should be provided, distinguishing between the numbers to be provided for in the common gaol, in the debtors' ward, and in the house of correction respectively; and such agreement shall further specify the proportion in which the expenses of purchasing the site, and of building, finishing, and fitting such prison and such other buildings (if requisite), or of rebuilding or enlarging any such prison or buildings, as the same may be, shall be borne by each of the contracting parties.

Further particulars of current expenditure to be stated.

VIII. And be it enacted, that such agreement shall further state the amount of salaries proposed to be paid annually to the governor, chaplain, and

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assistant chaplain or assistant chaplains, or medical officers, matron, and such other officers and assistants as may be therein specified; and such agreement may further state the sum (over and above the outlay for ordinary repairs and expenditure) which the committee will recommend that the contracting parties should put annually at the disposal of the committee, as a reserve fund for internal improvements or to meet extraordinary emergencies; and such agreement shall further state the proportion in which such salaries, such reserve fund, and such expenses as may be incurred in respect of the ordinary repairs of the said prisons and other buildings, and the government and discipline of the said prison, the maintenance, management, and custody of prisoners, and all other ordinary and current expenses of the said prison, shall be apportioned on each of the contracting parties, also the period of time, not less than three years, for which the first agreement for this last-mentioned proportion shall endure: Provided always, that at the expiration of such period the agreement shall nevertheless continue in force until altered and renewed upon such terms and in such manner as is hereinafter directed.

Agreements to be approved by the justices and councils separately, and confirmed by her Majesty.

IX. And be it enacted, that wherever any agreement shall have been so entered into and signed, the joint committee shall report the agreement for approval to the general or quarter session of the peace of every such county holden next after the making thereof, and to a special meeting of the council of every such borough to be convened for the purpose, and shall deliver to the court and

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council respectively a duplicate of the agreement, to be filed by the clerk of the peace and by the town clerk of each of the said parties respectively, to be by them kept with the records of the several parties aforesaid: Provided always, that no such agreement shall be valid until the same shall have been approved by the said several parties in manner aforesaid, and until the same shall have been confirmed by her Majesty as hereinafter directed: Provided also, that if such agreement be not so approved it shall be lawful for the said contracting parties severally to refer the same back for re-consideration to the said joint committee, after which the same shall be again reported, until finally approved and confirmed as aforesaid, or until any of the parties shall break off the agreement.

If not approved, to be referred back to joint committee.

X. And be it enacted, that each of the said parties shall forthwith cause such agreement, if by them approved, to be laid before one of her Majesty's principal Secretaries of State; and in all cases in which the prisoners, or any part thereof, committed to the said prison, are to be sent for trial before the recorder of any borough, such borough being one of the contracting parties, the agreement shall also set forth the sum which, in the judgment of the joint committee, ought to be paid by every such county to the recorder as an additional salary in respect of the additional duties thereby imposed on him; and the justices of the said county, if the agreement shall be approved by them, shall forthwith cause an undertaking on the part of the said county to pay the same to the recorder in that behalf, to be laid, with such agreement, before the

Agreements to be laid before Secretary of State;

to set forth the salary to be paid to recorders for any additional duties thereby imposed.

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Agreement may be confirmed by order in council;

Secretary of State; and it shall be lawful for her Majesty, if she shall think fit, by the advice of her privy council, to approve and confirm such agreement by order in council, and to appoint that such prison, when certified by one of her Majesty's principal Secretaries of State as fit for the reception of prisoners, shall thenceforth be used as a common gaol for such debtors as shall have been in the said agreement specified, and as a common gaol and house of correction for persons duly confined therein in respect of any offence committed within such district or borough aforesaid.

and thenceforth prison to be used as a common gaol.

Joint committee to re-assemble for carrying the purposes of the agreement into execution.

XI. And be it enacted, that as soon as any such agreement shall have been approved by all the contracting parties, and confirmed by her Majesty, with the advice aforesaid, the said joint committee shall re-assemble forthwith for the purpose of carrying the said agreement into execution, and shall elect a chairman, who in all cases of an equality of voices shall have a casting vote, and shall make regulations with respect to their future meetings, and the mode of convening the same, and shall appoint a fit person to act as clerk to the said committee, and shall fix the salary of the said clerk, such salary, until the first meeting of the court of gaol session hereinafter provided, to be paid out of and to be reckoned part of the capital provided for building, rebuilding, or enlarging the prison, and afterwards to be paid and reckoned as part of the current expenditure; provided always, that such salary shall in no case exceed the sum by the said agreement fixed as the salary of the clerk of gaol sessions: Provided also, that it shall not be lawful for such committee to do

Proviso.

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any act unless there shall be present at such meeting at least one justice representing each of the contracting parties.

Powers of joint committee with respect to purchasing lands, &c.

XII. And be it enacted, that all powers given by the said recited Acts of the fourth year and fifth year of the reign of King George the Fourth*, for purchasing, selling, conveying, and taking lands and other premises for the purposes therein specified, and for ascertaining the value, and for the conveyance, and for the application of the compensation for the same, and all other provisions of the said Acts relating thereunto, shall, as far as may not be inconsistent with the provisions of this Act, extend to all purchases to be made under and by virtue of the same; and all things by either of the said last recited Acts directed to be done at any general or quarter session of the peace, in relation to any of the matters hereinbefore last mentioned, may be done in respect of any purchases to be made under or by virtue of this Act, by the said joint committee, at special meetings to be called for the purpose, subject to the provisions of this Act; and all powers which the justices of any county possess by virtue of the said last recited Acts, or by any other Act relating to any of the matters aforesaid, may, in respect of the like matters in relation to the said prison, be exercised by the justices constituting such committee, in the same manner and with the same authority as if the said last mentioned justices were empowered to act generally in the commission of the peace for the county or borough in which such powers may be required.

* 4 Geo. 4, c. 64, s. 54, *et seq.*; 5 Geo. 4, c. 85, ss. 18, 19.

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Committee to make contracts.

XIII. And be it enacted, that the said committee shall contract with proper persons for the execution of such works as aforesaid, and shall superintend the due performance of the same: Provided always, that before any such works shall be begun, or any contract finally made for executing the same, the plan of such works, together with the estimates of the expense of completing the same, shall be submitted by the committee to the several contracting parties, and also to one of her Majesty's principal secretaries of state, and shall have been approved by the several parties in general or quarter session, or in special council, and by the Secretary of State.

Plans and estimates to be submitted for approval.

Accounts to be audited.

XIV. And be it enacted, that the expenses of purchasing the said land or other premises, and of executing such works as aforesaid, shall be from time to time rendered in account by the said committee, and shall be duly audited and certified to the several contracting parties in general or quarter session, or in special council, by such auditor or auditors as shall be for that purpose appointed by the several contracting parties.

Appointment of officers.

XV. And be it enacted, that the said committee shall appoint for the said prison a governor, a chaplain, being a clergyman in priest's orders not having any other cure of souls, also an assistant chaplain or assistant chaplains if it shall be so provided in the original agreement, a surgeon or medical officer, a matron, and such other officers, assistants, and servants as may be necessary for the service and discipline of the said prison, and may suspend or dis-

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miss all or any of them, and, in all those cases in which the salaries to be paid to any of the said officers of the prison shall not have been fixed by the agreement, shall fix the same as shall seem best in their discretion.

Certificate of completion of prison to the Secretary of State;

XVI. And be it enacted, that when any prison, or a sufficient part thereof, shall have been fitted and completed for the reception of prisoners, and proper officers shall have been appointed for the management thereof, the committee shall certify, by writing under the hands of three or more of them, to one of her Majesty's principal Secretaries of State, that such prison, or a sufficient part thereof, is so fitted and completed, and that such officers have been appointed; and upon such certificate it shall be lawful for the said Secretary, by an order in writing addressed to the several clerks of the peace of every county and of every borough, being one of the contracting parties, and to the clerk of the said committee, to direct that the prison may thenceforth be used as a prison under this Act, and that all such debtors as are specified in the said agreement, and all prisoners at that time confined in the common gaol or house of correction of any borough, being one of the contracting parties, may (if requisite) be forthwith removed by the keeper of such gaol or house of correction to the said prison; and all prisoners who, if originally committed to the said prison, might have been tried and sentenced at the sessions for any such borough, under the provisions of this Act, may be removed from any gaol in which they may be then confined to the said prison, for the purpose of such trial and such sentence as aforesaid.

Who may direct the prison to be thenceforth used as a prison under this Act.

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Committee to hold a gaol sessions.

XVII. And be it enacted, that the justices constituting such joint committee shall from time to time hold a court of gaol sessions for every such prison, and such court shall possess and exercise all the powers and authority respecting such prison, and all matters relating thereto, which by any Act are vested in the court of general or quarter sessions of the peace for any county with respect to any gaol or house of correction belonging to such county; and where by any Act anything is ordered to be done at any general or quarter session, or at an adjournment thereof, respecting any gaol or house of correction therein specified, then such things may be done with respect to such prison at such gaol session, or at any adjournment thereof, or at one or more subsequent gaol sessions, in such ways and with such public notices as in the said Acts they are ordered or directed to be done by the general or quarter sessions, or at an adjournment thereof: Provided always, that nothing herein contained shall be deemed to authorise any such court of gaol sessions, or such justices of the peace, to do any act or make any order touching the building, rebuilding, enlarging, or altering such prison, or the borrowing or the levying of any sum of money by rate or otherwise, the granting of any annuity, or fixing any salaries, or the creating any offices, except as to all the above specified matters in such cases as are herein especially provided for, or to exercise any authority whatever in the government or management of the said prison contrary to the provisions of this Act.

Prison for the purposes of jurisdic-

XVIII. And be it enacted, that in the case of every prison built, rebuilt, or enlarged in pur-

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suance of any such agreement, such prison and place in which the court of gaol sessions shall be holden as herein provided shall, for all purposes relative to the jurisdiction of such gaol sessions, and of the justices of the peace empowered to act in the government of the said prison, be deemed to be within the county and borough to which the ordinary powers of such justices respectively extend.

tion deemed within both county and borough.

XIX. And be it enacted, that as soon as the clerk of the said committee shall have received the order in writing of the Secretary of State as aforesaid, he shall summon the members of the committee to meet in gaol session, as soon as conveniently may be, at some place in or near to such prison, and the clerk of the said committee shall act as clerk of the court of gaol sessions.

Clerk to summon the first gaol session.

XX. And be it enacted, that the clerk of the gaol sessions, on receiving a precept commanding him so to do, signed by any two of the said committee, shall summon the committee to meet in a court of gaol sessions, by a notice to be published at least twice in some public newspaper usually circulated throughout the district in which such prison shall be situated, and also by notice in writing to be sent to each member of the committee, which notice shall declare the day, hour, and place at which such court is to be holden; and if the court of gaol sessions shall be dissolved without adjournment, or shall adjourn for a longer time than three calendar months, the clerk shall, by a like notice to be issued of his proper authority without any precept in that behalf, summon a court of gaol sessions to be holden

Gaol sessions to be holden when summoned by two of the committee.

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within three calendar months next after such dissolution or last adjournment.

Justices to appoint the place for holding gaol sessions.

XXI. And be it enacted, that at every such court of gaol sessions the justices therein assembled shall appoint the place for holding the gaol session then next ensuing, and in case of no such appointment having been made, the session then next ensuing shall be holden at the same place as the session last immediately preceding, but no such session shall be holden at a greater distance than one mile from the said prison.

Visiting justices to be appointed.

XXII. And be it enacted, that at the first court of gaol sessions to be holden as aforesaid, and at some ensuing court of gaol sessions once at least in every quarter of a year, the said committee shall nominate for each of the contracting parties one justice who shall consent thereunto, being a justice acting for the county or borough for which he is appointed, and, if a county justice, residing within the district set out in the agreement aforesaid, and the justices so appointed shall be visitors of such prison; and the committee shall report the names and places of abode of such visiting justices to one of her Majesty's principal Secretaries of State; and such visiting justices shall discharge the same duties and exercise the same power and authority in respect of such prison, and all matters relating thereto, as may now be discharged or executed by any visiting justices appointed in respect of the gaol of any county, save that, instead of reporting to the general quarter sessions of the peace, they shall report to the court of gaol sessions aforesaid.

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XXIII. And be it enacted, that the said committee shall appoint a treasurer, who shall not be the clerk of the committee; and the treasurer shall receive and pay all monies to be received by or to be disbursed by order of the committee, either in building, rebuilding, or enlarging the prison, or when sitting as a court of gaol sessions, and shall give discharges for the monies received, and apply the same as by the said committee shall be directed, and shall keep a distinct account of such monies received and paid, and shall from time to time, when called upon by the said committee, account, upon oath if required, for all monies so by him received, and deliver in all vouchers respecting the same; and such treasurer shall give such security for faithful performance of his duty as the committee shall direct, and shall receive such salary as shall be directed in the agreement, or, in default thereof, as the committee shall direct. Treasurer to be appointed.

XXIV. And be it enacted, that the accounts kept by the said treasurer, and all other accounts relating to the said prison, except such as are herein otherwise provided for, shall, together with all receipts and vouchers for the same, be examined from time to time by the said committee, and shall be verified, on oath if required, by the several parties keeping and rendering the same, and, if duly allowed by the said committee, shall be signed by the chairman; and the said committee shall cause a balance sheet, setting forth the current expenditure incurred in respect of the said prison, and all other matters authorised by the original agreement between the parties and by the provisions of this Act, to be made out once in every quarter of a year; and the clerk of such gaol sessions shall cause a copy of the said Accounts to be examined by the committee and signed by the chairman; balance sheet to be made out; copy thereof to be laid before the

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quarter sessions and council.

balance sheet, signed by the chairman of the committee, to be forthwith sent to the clerk of the peace of every county, and to the town clerk of every borough, being one of the contracting parties; and every such clerk of the peace and town clerk shall cause the same to be laid before the then next ensuing general or quarter sessions of the peace for the said county and the then next ensuing quarterly meeting of the council of the borough; and such balance sheets, having been so submitted for inspection, shall be filed amongst their respective records, by every such clerk of the peace and town clerk respectively.

Orders for money.

XXV. And be it enacted, that the committee from time to time shall estimate, as correctly as may be, what sum of money will be required for payment of the expenses then already incurred or to be incurred in carrying into effect the provisions of this Act, and shall make an order accordingly; and their clerk shall forthwith send a copy of such order, signed by the chairman, mentioning the sum of money to be paid by virtue thereof, according to the proportions defined by the agreement then in force by each county or borough, being severally contracting parties as aforesaid, to the treasurers of the said parties respectively, which treasurers shall forthwith, out of the monies in their hands, or if those monies shall be insufficient, then so soon as sufficient monies shall come to their hands, pay the sum required to the treasurer of the said committee, and take his receipt for the same, and the receipt of the treasurer of the said committee shall be a sufficient discharge to the treasurer of such county or borough respectively.

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Justices and council may appoint committee to inspect prisons.

XXVI. And be it enacted, that it shall be lawful for the justices of the peace of any county, and for the council of any borough, being parties so contracting as aforesaid, by their several committees appointed by them in general or quarter session or quarterly meeting respectively for that purpose, to inspect at the said prison all books, papers, accounts, vouchers, and other documents relating to the prison, and to the government and management thereof.

Reports to the gaol sessions.

XXVII. And be it enacted, that all reports and statements directed by the said recited Acts of the fourth year and fifth year of the reign of King George the Fourth to be made to the general or quarter sessions shall be transmitted, on or before the first days of January, April, July, and October, to the clerk of the said gaol sessions, and be by him laid before the court at the gaol session then next ensuing.

Proceedings to be notified to Secretary of State.

XXVIII. And be it enacted, that the chairman of every court of gaol sessions holden next after the first day of October in each year shall, within fourteen days after the determination of such sessions, or any adjournment thereof, send to one of her Majesty's principal Secretaries of State such account of proceedings, and such copies of rules and regulations, as in and by the said last-mentioned Acts are ordered to be transmitted by the chairman of the Michaelmas quarter sessions, and shall at the same time, or within three calendar months afterwards, transmit such plans as in the said Acts are mentioned.

Reports and returns to be

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made as in other prisons.

statute at any time in force directed to be made by the keeper of every county prison shall be made by the governor of every prison built, rebuilt, or enlarged under any agreement authorised by this Act, and shall be delivered to the clerk of the said gaol sessions two weeks at least before the first day of October in each year; and such clerk shall, on the said first day of October, prepare a general report, founded on the report of the visiting justices and of the chaplain, and on the certificates and reports of the governor and other officers of the said prison, and on any other report or document respecting the said prison, and shall lay the same before the next court of gaol sessions; and such report, when approved by such court, shall be signed by the chairman thereof; and the said clerk of gaol sessions shall forthwith cause true copies thereof, and of the said return, to be made, and shall send forthwith a copy of each to the clerk of the peace of every contracting party, whether county or borough, to be by such clerk of the peace laid before the next court of quarter sessions of the peace holden for their county or borough, and shall send like copies to the town clerk of every borough, being a contracting party, to be by him laid before the next meeting of the council, and shall also send like copies to one of her Majesty's principal Secretaries of State.

Penalties for offences respecting the prison.

XXX. And be it enacted, that if anything be done respecting any prison built, rebuilt, or enlarged under any agreement made by authority of this Act, for which any fine, penalty, or forfeiture would have been incurred under the last-recited Acts or either of them if done respecting any gaol or house of cor-

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rection to which such Acts or either of them extend, and would by virtue thereof have been payable to the county treasurer, all forfeitures, fines, and penalties for such matter or thing, when done respecting such prison, shall be paid to the treasurer of the gaol sessions for the purposes of defraying the expenses of the said prison.

Revision of agreement.

XXXI. And be it enacted, that on the termination of the time limited by the agreement touching the proportion to be contributed by each of the contracting parties towards the current annual expenditure aforesaid, as fixed by the original agreement aforesaid, the committees representing the several contracting parties, and jointly constituting the joint committee, may severally proceed to propose such revised proportion to the court of gaol sessions, and also the period, being not less than seven years, for which such revised proportion shall endure, and the court of gaol sessions shall take every such proposal into consideration: Provided always, that no such proposal shall be made unless the intention of proposing such alteration shall be expressed in the notice whereby the said Court is summoned, and unless such notice shall be published for one calendar month at least before the holding of the Court at which such alteration shall be so taken into consideration.

Disputes to be settled by arbitration.

XXXII. And be it enacted, that when the court of gaol sessions shall resolve that any such alteration ought to be made, or shall not adopt a proposal for making any such alteration, and any of the contracting parties shall be dissatisfied with such reso-

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lution, it shall be lawful for the clerk of the peace of any county, and for the town clerk of any borough, such county or borough being one of the parties so contracting, and such clerk being thereunto authorised respectively by an order from the court of quarter sessions of such county, or from the town council of such borough in special council assembled, as hereinbefore provided, to apply to one of the prison inspectors appointed by the Secretary of State to visit that prison; and such inspector shall have power to arbitrate between the said parties; and the said arbitrator shall summon the several clerks of the peace and the town clerks of the several parties so contracting as aforesaid, the clerk of such gaol sessions, the governor of the said prison, and such other persons as he may require, to appear before him at a time to be by him appointed, and there to give evidence on oath, which such arbitrator shall be empowered to administer, and to produce all information touching the matter in dispute; and such arbitrator may, if he shall see fit, adjourn the hearing from time to time, and require all such further information to be afforded by either of the parties as shall appear to him necessary, and shall by his award in writing determine the matters in dispute, and his award shall be final and conclusive between the parties for seven years, and until a proposal for further revision shall be made after the end of such term of seven years as aforesaid; and such arbitrator shall assess the costs of the arbitration, and shall direct by whom and out of what fund the same shall be paid.

Committee may recom-

XXXIII. And be it enacted, that if it shall at

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any time appear to the said committee that the said prison or other buildings should be rebuilt or enlarged, or undergo such alterations as do not come within the description of ordinary arrangement or ordinary repair, or that it may be desirable to increase or reduce any of the salaries set forth in the existing agreement, or to grant any annuity to a retired officer of the establishment, or to make any other special provision in furtherance of the objects of this Act, it shall be lawful for the said committee to make a special report thereon to each of the parties so contracting as aforesaid, to be laid before the justices in quarter session and before the council of the borough respectively; and if on taking the same into consideration, with due notice thereof, as is required upon making the first agreement, such report be approved by the contracting parties, it shall be lawful for such parties to direct the said committee to draw up the necessary agreement, and upon the approval and confirmation of such agreement, in the same manner as upon making the first agreement, to carry into execution such matters as shall have been mutually agreed on, in the same manner, and with the same powers, and subject to the same provisions as in the first building, rebuilding, or enlarging such prison or other buildings, as hereinbefore specified. Committee may amend alterations.

XXXIV. And be it enacted, that on the ninth day of November next after the completion of twelve calendar months from the day of holding the first court of gaol sessions as aforesaid, and on the ninth day of November in every succeeding year, the committee constituting such court of gaol Committee to be re-elected every year.

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sessions shall go out of office; and the justices of every county, being a party so contracting as aforesaid, shall at the court of quarter sessions next immediately preceding the said ninth day of November, and the town council of every borough, being a party so contracting, shall, at the quarterly meeting of the council to be holden on the said ninth day of November, appoint fit persons to perform the duties of such committee; and such appointment shall be made from amongst the like persons and in the same manner, and subject to the like conditions, as are hereinbefore provided for the first appointment of the said committee: Provided always, that any member of the said committee so going out of office shall be capable forthwith of being re-appointed if then duly qualified.

Sale of old prisons.

XXXV. And whereas by the said recited Act of the fourth year of King George the Fourth provision was made for the sale, in certain cases, of the sites of old prisons no longer necessary: and whereas by an Act passed in the seventh year of King George the Fourth, intituled *An Act for the Disposal of unnecessary Prisons in England*, provision was made for extending the same power to other cases; Be it enacted, that all the powers contained in the two last-recited Acts touching such sale, and such other matters relating thereunto as are therein specified, shall be vested in the several councils of the boroughs, being contracting parties to any such agreement as aforesaid, in respect to the sale of any similar property in such boroughs, and to any other matters relating thereunto; and all acts directed in the said recited Acts to be done at any court of quarter

7 Geo. 4. c. 18.

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sessions, touching such sales and such other matters aforesaid, may be done in respect to the sale of any similar property in such boroughs, and to any other matters relating thereunto, at a special meeting of such council to be holden for the purpose: Provided always, that in all such boroughs, unless there be a provision in the agreement for accommodating all the borough debtors in the district gaol, a portion of the old prison shall be fitted up as a debtors' prison or debtors' ward.

One court to be holden for the united district.

XXXVI. And be it enacted, that one court shall be holden for the united district of such borough and the district of the county with which it shall be so joined, and the jurisdiction of the court of such borough shall extend over the whole of such united district; and the recorder of that borough shall be the recorder for the united district, and shall hold courts of sessions of the peace for the united district; and the clerk of the peace of such borough shall, for all the purposes of this Act, be the clerk of the peace for the united district; and all depositions, recognizances, and other documents relating to prisoners committed to such district prison shall be returned to the clerk of the peace acting for the united district.

Who to be jurors.

XXXVII. And be it enacted, that in every such case the hundreds, parishes, townships, or other districts so united with the borough, for the purpose of holding such district court therein, shall be taken to be within the provisions of an Act passed in the sixth year of the reign of King George the Fourth, intituled *An Act for consolidating and amending* 6 Geo. 4, c. 50.

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the Laws relative to Jurors and Juries; and the persons therein residing, and qualified to serve on juries under the last-recited Act, shall be liable to serve as jurors at the sessions holden for such borough and united district, and shall be returned in the jury lists to the high constable, and by him to the clerk of the peace of the county in which such district is situated.

List of jurors to serve at the borough sessions.

XXXVIII. And be it enacted, that the clerk of the peace for such county shall send a copy of the lists of jurors which he shall receive, relating to the said hundreds, parishes, townships, or other districts, to the clerk of the peace for such borough, and the jurors named in the said lists shall be taken to be within the provisions of an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales,* with regard to persons liable to serve upon juries at quarter sessions of the peace within such borough.

5 & 6 Will. 4, c. 76, ss. 121, 122.

Jurors' book.

XXXIX. And be it enacted, that the clerk of the peace for the borough shall include the names so sent to him, with the names of the burgesses liable to serve on juries at the court of quarter sessions for the said borough, in one alphabetical list, which shall be the jurors book for the said borough and adjacent district so united with it, for the purpose of the said Court; and the number to be summoned to attend any such Court shall be such as the recorder shall think necessary for the business of the Court, not being in any case less than thirty-six; and the clerk of the peace for the

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borough shall have the same powers for summoning jurors from the portion of the county comprised in the united district as are by law vested in the sheriff for the county for the like purpose.

Jurors attending borough sessions to be exempted as at county sessions.

XL. And be it enacted, that the clerk of the peace for such borough shall, within twenty days after the close of each district session holden in that borough, make out and transmit to the clerk of the peace of the said county a list of such men who shall be summoned from such hundreds, parishes, townships, or districts, and who shall attend or serve on any grand jury or petty jury at such borough session, with their respective places of abode, and additions, and the date of their services; and every man so summoned, and having duly served or attended until discharged by the court, shall be entitled, on application, before he shall depart from the borough, and upon payment of one shilling, to receive a certificate thereof from the clerk of the peace of such borough, and shall be entitled to the same exemptions from being summoned to attend at any future session to be holden either for the borough or for the county, and shall be in every respect on the same footing and enjoy the same privileges as if he had been summoned and had attended and served at any session of the peace for the said county.

District may be divided among boroughs for trial of prisoners.

XLI. And be it enacted, that in every case in which more than one borough having a court of sessions of the peace shall be a party to the agreement aforesaid, the district so united as aforesaid shall be divided into as many divisions as there shall be boroughs included in such agreement; and

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to each of such boroughs shall be apportioned such a division of the said district as shall be more immediately adjacent thereunto, and shall be set forth in the agreement, regard being had to the amount of population in the whole district, and the other circumstances of the case; and all prisoners committed to the said prison for any offence committed within any division aforesaid shall be sent for trial to the sessions of the peace holden for that borough to which such division shall have been apportioned; and the provisions hereinbefore contained with respect to jurors, and the return of convictions, depositions, recognizances, and other documents for the united district, shall apply in each case to the division apportioned to each borough.

Providing for expenses of district courts.

XLII. And in order to provide for the mode of defraying the expenses of the said district courts as hereinbefore authorised, Be it enacted, that the said court shall be empowered to order the treasurer of the said committee to defray, out of any monies in his hands as such treasurer, the expenses incurred in holding the said courts, and also to pay such costs, charges, and expenses as to the court shall seem reasonable, to prosecutors, witnesses, and others before the said court, in such and the like cases as the court of sessions of the peace holden for any county is empowered to make orders on the treasurer of the county for payment of the like costs, charges, and expenses upon prosecutions or trials before such last-mentioned court; and the treasurer of the committee, or some person authorised by him, shall attend the said district courts, and shall pay such costs, charges, and expenses accordingly.

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Recorder of united district, &c. restrained from trying certain offences.

XLIII. And be it declared and enacted, that neither the recorder for such united district, nor any barrister at law appointed by her Majesty to hold any court of general sessions of the peace or gaol delivery for any borough, district, or place, shall be empowered at any court holden by him to try any person or persons for any treason or felony which, by an Act passed in this session of Parliament, intituled *An Act to define the Jurisdiction of Justices in General and Quarter Sessions of the Peace*, the recorder of any borough is restrained from trying at any session of the peace.

5 & 6 Vict. c. 38.

Act not to affect corporations of Birmingham, Manchester, and Bolton.

XLIV. Provided always, and be it enacted, that nothing in this Act contained shall extend or be construed to extend to confirm or render valid, or in anywise to affect, the charters of incorporation granted by her Majesty in the year one thousand eight hundred and thirty-eight, upon the petition of certain of the inhabitants of the towns of Birmingham, Manchester, and Bolton respectively, or any one of such charters, or any act done or to be done in pursuance of any such charter(1).

Interpretation of Act.

XLV. And be it enacted, that in this Act, unless the context shall require a different construction, the word "prison" shall be taken to mean a gaol and house of correction; and the word "county" shall mean and comprise every riding, part, or division of a county, and every liberty having a separate commission of the peace; and the word "borough" shall

(1) See post, 5 & 6 Vict. c. 111.

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mean and comprise a city, town, or port, as well as a borough; and the word "prisoners" shall include persons committed to prison for want of bail or securities, as well as persons charged with or convicted of any offence, or otherwise detained by legal authority.

Commencement of Act.

XLVI. And be it enacted, that this Act shall commence and take effect from the first day of September in the year one thousand eight hundred and forty-two.

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PRISONS ACT.

5 & 6 VICT. CAP. 98.

An Act to amend the Laws concerning Prisons.

[10*th August*, 1842.]

WHEREAS it is expedient that the laws concerning prisons should be amended, and that greater facilities should be given for building prisons; Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that after the several terms hereinafter mentioned, all lands, tenements, and hereditaments purchased for the purposes of a prison, court house, or other necessary buildings to be used with such prison, shall become and remain absolutely vested in the person or persons or body corporate to whom the conveyance shall be made, and their heirs or successors, in trust for the purposes of a prison, court house, or other necessary buildings to be used therewith; that is to say, after the expiration of five years after the passing of this Act, with respect to lands, tenements, and hereditaments purchased before the passing of this Act, and after the expiration of five years from the date of the conveyance, with respect to lands, tenements, and hereditaments purchased after the

Confirmation of title to lands, &c. taken for the purposes of prisons, &c.

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passing of this Act; and that if any proceedings shall be taken before the expiration of the said several terms of five years, upon which judgment shall be obtained for the recovery of the possession of any such lands, tenements, and hereditaments, then within two calendar months after such judgment shall be obtained there shall be paid or tendered to the person obtaining such judgment, instead of such lands, tenements, and hereditaments, his or her costs on the proceedings for obtaining such judgment, and such sum of money as a jury, in the manner hereinafter mentioned, shall find to have been the value of the said lands, tenements, and hereditaments.

Jury to ascertain the value to be paid.

II. And be it enacted, that the jury which shall try any proceedings brought for the recovery of the possession of any of the said lands, tenements, or hereditaments shall at the same time ascertain the value thereof at the time when they were conveyed, or when possession was taken thereof for the purposes of a prison, and the value so found shall be certified by the presiding judge under his hand, and such certificate shall be delivered to the person seeking to recover possession thereof, and the value so ascertained shall be the amount to be paid, instead of such lands, tenements, and hereditaments.

The borough council may borrow money for building prisons.

III. And be it enacted, that in every borough in which there is or shall be a body corporate of mayor, aldermen, and burgesses, under the provisions of an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the Regula-*

5 & 6 Will. 4, c. 76.

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tion of Municipal Corporations in England and Wales, or of any charter granted in pursuance of that or any subsequent Act, and in which there shall be a separate court of sessions of the peace, it shall be lawful for the mayor, aldermen, and burgesses, by their council, from time to time to take up and borrow any sum of money, not exceeding the amount of the estimate or estimates approved by the council, for building or rebuilding, repairing or enlarging the prison, court house, and other necessary buildings to be used with the prison for such borough, according to any plan approved by one of her Majesty's principal secretaries of state, and for the purchase of land for the purposes of any such prison, court house, and other necessary buildings as aforesaid, or for repaying any monies which may have been borrowed for any of the said purposes before the passing of this Act: Provided always, that the whole of the sum borrowed under this Act, and the interest accruing due from time to time, shall be repaid within thirty years from the time of borrowing the same(1).

Exchequer loan commissioners may lend money to boroughs.

IV. And be it enacted, that, upon the application

(1) See 5 & 6 Will. 4, c. 76, s. 116, ante, p. 213; 7 Will. 4 & 1 Vict. c. 78, s. 37, ante, p. 362; 5 & 6 Vict. c. 53, ante, p. 408. See also, post, 11 & 12 Vict. c. 39, whereby greater facilities are given to the councils of boroughs for raising and repaying monies levied for the purpose of building &c. prisons, court-houses, &c., and certain clauses of the Commissioners Clauses Act, 1847 (10 & 11 Vict. c. 16) respecting mortgages executed by the commissioners, are made applicable to mortgages and bonds granted under the common seal of any borough under this Act.

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missioners may grant loans.

of the council of any such borough, it shall be lawful for the commissioners appointed for the execution of the Acts authorising the issue of exchequer bills and the advance of money for carrying on public works, to make advances, subject to the provisions of the said Acts, for building, rebuilding, enlarging, improving, repairing, or fitting up any prison of that borough, as fully as the said commissioners are empowered to make such advances for the like purposes to the justices of any county in England, on the application of the major part of them; and it shall be lawful for the council to receive any sum so advanced, and to apply the same to the purposes for which such advances shall be made, so that all sums so advanced, with the interest thereon, shall be fully repaid and satisfied within the period of twenty years from the advancing thereof.

Power of mortgage.

V. And be it enacted, that, for securing repayment of the money so advanced, it shall be lawful for the council to grant bonds under the common seal of the mayor, aldermen, and burgesses of the borough, or instead of issuing such bonds, to mortgage, with the consent of three or more commissioners of her Majesty's Treasury, any part of the lands, tenements, and hereditaments of the said body corporate, the issues, rents, and profits of which, by any law now in force, are or may be applied towards erecting or maintaining a gaol or house of correction in their borough, and to repay the money borrowed, and the interest accruing due thereon, or so much thereof as the council shall think fit to charge thereupon, out of the borough fund or borough rate, but subject and without prejudice to any prior claim

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upon such borough fund, or instead or in aid thereof it shall be lawful for the council to make gaol rates, and to secure the repayment of any money so advanced, with the interest accruing due, or so much as shall be charged thereupon, by mortgage of the borough rates or gaol rates, so that all the money borrowed, with the interest due thereon, shall be repaid within the said term of thirty years, or, in case the money shall have been advanced by the commissioners of exchequer bills, within twenty years; and every such mortgage may be by instrument in the form contained in the schedule annexed to this Act, or in any other suitable form.

Gaol rate to be made and raised in the same manner as borough rate.

VI. And be it enacted, that every gaol rate made for the purpose of repaying any money advanced by any person or body corporate for any of the purposes aforesaid shall be made, levied, and raised in like manner as the borough rate may be made, levied, and raised; and all powers and authorities now vested in the council, or in overseers of the poor, or persons appointed by the council to act as such overseers, relating to the making, levying, and collecting the borough rate, shall be in full force and effect in relation to the making, levying, and collecting any such gaol rate.

Parishes, &c., partly within the borough.

VII. And be it enacted, that in every case in which any parish, township, precinct, or place liable to support its own poor shall be partly within and partly without any such borough, the overseers or other persons charged with the collection of the rates made for the relief of the poor in such parish, township, precinct, or place, upon the receipt of any

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warrant from the mayor, or any justice or justices of the peace, high constable, or other officer duly authorised to act in that behalf within the borough, for the payment of money for the purposes of this Act, (which warrants every such mayor, justice of the peace, high constable, and other officer shall be severally empowered to direct to them, in like manner as if the whole of such parish, township, precinct, or place were within their borough,) shall assess upon and levy from the inhabitants and occupiers of all messuages, lands, tenements, and hereditaments liable to the poor rates in that part of their parish, township, precinct, or place which is within the borough, the amount mentioned in the warrant, either as a separate rate or rates, for which the said overseers shall have all the powers which belong to them for levying a rate for the relief of the poor, or with and as part of the poor rate, and in addition to the poor rate to which the inhabitants and occupiers of property within that part of the parish, township, precinct, or place may be liable, in common with the inhabitants and occupiers of property within the other part thereof which is not within the borough, and out of the monies so levied and collected, or out of any monies in their hands collected for the relief of the poor, shall pay the amount mentioned in the warrant, and in default thereof shall be subject to all the provisions and penalties provided by any Act concerning the non-payment of any borough rate(1).

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(1) See 7 Will. 4 & 1 Vict. c. 78, s. 29, ante, p. 356; and 7 Will. 4 & 1 Vict. c. 81, s. 3, ante, p. 382.

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Corporations and others empowered to sell and convey lands.

VIII. And be it enacted, that it shall be lawful for the Queen's most excellent Majesty, her heirs and successors, and for all bodies politic and corporate, and also for all guardians, committees, husbands, trustees, and attornies of all persons being infants, lunatics, idiots, under coverture or any other disability, and also for all other persons who are or shall be seised, possessed of, or interested in any houses, buildings, lands, tenements, hereditaments, easements, or privileges which shall be deemed necessary for the purposes of this Act, to contract or agree for, and to sell, convey, and assure such houses, buildings, lands, tenements, hereditaments, easements, and privileges, unto the mayor, aldermen, and burgesses of the borough, in trust and for the purpose of converting the same into or for erecting new prisons, court houses, or other necessary buildings to be used with such prisons, or of enlarging old ones, and of providing the yards, courts, and outlets thereunto belonging; and all such contracts, agreements, sales, conveyances, and assurances shall be valid and effectual in law to all intents and purposes whatsoever; and the provisions of the Act passed in the fourth year of the reign of King George the Fourth, intituled *An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales*, respecting contracts of the like description, shall extend and apply to the contracts entered into under this Act, as if the council of the borough had been therein named instead of the justices, except that the council shall have no power to compel any person or body corporate to enter into any such contract.

4 Geo. 4, c. 64.

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Repeal of part of 4 Geo. 4, c. 64.

4 Geo. 4, c. 64.

IX. And be it enacted, that so much of an Act passed in the fourth year of the reign of King George the Fourth, intituled *An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales*, as restricts the power to borrow money for building, rebuilding, repairing, or enlarging any gaol or house of correction to the case where the amount of the estimate approved by the justices shall exceed one half of the amount of the ordinary annual assessment for the rate of any county, riding, division, district, city, town, or place, or as provides that the sum of money to be borrowed under the powers of the said Act for building or rebuilding, repairing or enlarging any gaol or house of correction, shall be borrowed in sums not exceeding one hundred pounds each, or as provides that the principal sum borrowed must be repaid within fourteen years from the time of borrowing the same, shall be repealed.

Extending the power of holding land for prisons.

XIII. And be it enacted, that, for the purpose of providing a prison, it shall be lawful for the justices of any county, or such person or persons as they shall appoint for that purpose, and for the mayor, aldermen, and burgesses of any borough, to purchase and hold so much land as one of her Majesty's principal Secretaries of State shall deem to be necessary for the purposes of such prison.

Contracts may be made with committees of district prisons.

XIV. And be it enacted, that the justices of any county, and the mayor, aldermen, and burgesses of any borough, by their council, shall respectively

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have the same power for contracting with the committee for managing any district prison established under an Act* passed in this session of Parliament, for the conveyance, support, and maintenance in such district prison of prisoners committed thereto from such county or borough, which they respectively have for contracting for the like purpose with the justices of any county, or the mayor, aldermen, and burgesses of any borough, or their council; and it shall be lawful for the committee for managing any such district prison to enter into such contracts, and to order that offenders shall be received under such contracts into the said district prison, although the county or borough with which any such contract may be made shall not be a contracting party to the agreement in pursuance of which such district prison shall have been established; and all such offenders may be tried and sentenced by the district court for all offences of which the court has cognizance, and punished accordingly, in like manner as any offenders committed to such district prison from any borough, party to the said agreement.

* 5 & 6 Vict. c. 53, s. 17, ante, p. 420.

Gaol and house of correction to be provided for every borough having separate courts of sessions of the peace, except as to district prisons.

XV. And be it enacted, that in every such borough as aforesaid to which a separate court of sessions of the peace hath been or shall hereafter be granted, there shall be one common gaol and at least one house of correction, excepting those boroughs in which the mayor, aldermen, and burgesses, by their council, shall have contracted with the justices of the peace having authority or jurisdiction in or over any gaol or house of correction of the county, riding, or division wherein such borough is situated, or

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whereunto it is adjacent (1), or with the mayor, aldermen, and burgesses of some other borough in which there is a gaol or house of correction (2), or with the committee of a district prison (3), for the support and maintenance in such last-mentioned gaol or house of correction, or district prison respectively, of any prisoners committed thereunto from such borough; and during the continuance of any such contract, but no longer, the first-mentioned mayor, aldermen, and burgesses shall not be bound to maintain any other gaol or house of correction for their borough; and it shall be lawful for the mayor, aldermen, and burgesses of any such borough, by their council, to enter into such contracts as aforesaid, although at the time of entering into such contract there may be no gaol or house of correction belonging to such borough; and all enactments with respect to such contracts shall apply as well to those contracts where at the time of entering into the same there was or is a gaol or house of correction belonging to the borough, as to those contracts where there was or is no gaol or house of correction belonging to the borough at the time of entering into the same.

Repeal of any enactment authorising Act as enacts that any such agreement shall be made

XVII. And be it enacted, that so much of any

(1) See 5 Geo. 4, c. 85, ss. 1 & 2, and 5 & 6 Will. 4, c. 76, s. 114, ante, p. 209.

(2) See 5 & 6 Will. 4, c. 76, s. 115, ante, p. 212.

(3) See 5 & 6 Vict. c. 53, ss. 5—8, ante, pp. 412, 413.

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by the council of any borough at a quarterly meeting of the council shall be repealed, and that any such agreement may be made by the council of any such borough at a special meeting of the council to be called for that purpose (4): Provided always, that nothing in this Act shall affect any contract entered into before the passing of this Act between any justices and the council of any borough.

Using agreement to be made at quarterly meeting of council.

XVIII. And be it enacted, that in every borough to which a separate court of sessions of the peace hath been or shall hereafter be granted or purported to be granted, and where the persons committed for offences arising within such borough have been or shall hereafter be sent to any prison of the county in which such borough is situated, and that no special contract shall be subsisting between such borough and county relative to the said prisoners, the council of such borough shall pay or cause to be paid to the treasurer of such prison, or other person appointed by the justices of the peace, in general or quarter sessions assembled, for the county in which such prison is situated, the actual expenses heretofore incurred, or hereafter to be incurred, in the conveyance, transport, maintenance, safe custody, and care of every such prisoner, according to the time for which each such prisoner shall have been or shall remain in custody there, at the average daily cost of each prisoner, according to the whole number of prisoners confined in the said prison, such average to be taken yearly, half yearly, quar-

Expense of borough prisoners in county prisons to be paid by the borough.

(4) See ante, pp. 211, 362, and 410.

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terly, or at such other intervals as the visiting justices of the prison shall from time to time determine, including in such expenses all salaries of officers, all expenses of repairs, alterations, additions, and improvements in or to the said prison, all sums paid to prisoners under any Act of Parliament on their discharge or otherwise, and any other charge whatsoever on account of the prisoners confined in such prison; subject nevertheless to a proportional share of all deductions on account of the earnings of prisoners in the said prison, and of all sums of money received in aid of the rates levied for the maintenance of the said prison: Provided always, that the payment by the council of any such borough of any such expenses incurred before the passing of this Act may be made by five equal yearly instalments, the first of such instalments to be payable within three calendar months after the passing of this Act, with interest after the yearly rate of four pounds in the hundred, to be calculated from the passing of this Act, upon so much of the said expenses incurred before the passing of this Act as shall remain unpaid until the whole shall be discharged(1).

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(1) In 1839, after a petition had been presented for a grant of quarter sessions to the borough of Birmingham, which had no gaol of its own, a negotiation was entered into between the town council and the justices of the county of Warwick, respecting the maintenance of borough prisoners in the county gaol and house of correction for one year. The county quarter sessions resolved, that 11*d.* a day for each such prisoner would be a proper charge, and the council resolved that those terms should be acceded to; and such resolutions were entered in the books of the sessions and in

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XIX. And be it enacted, that the expenses heretofore incurred or hereafter to be incurred in the prosecution of such prisoners as aforesaid at the general or quarter sessions of the peace of the county wherein such borough is situated shall be defrayed by the treasurer of such borough in such manner as is directed for the payment of the costs of prosecutions by an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, out of a rate to be made, levied, and recovered within the said borough in the same manner as the rate hereinafter mentioned.

Expenses of prosecution of such prisoners, how to be defrayed.

5 & 6 Will. 4, c. 76, s. 113.

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the minutes of the town council. Afterwards, in May, 1839, the borough obtained its grant of quarter sessions. It was then proposed that a contract should be prepared containing the above terms; but none was prepared, in consequence of the doubts as to the validity of the charter. Prisoners committed for trial at the borough sessions were conveyed to the county gaol, and there, or in the county house of correction, underwent their sentences. In September, 1839, an account was sent to the borough, charging for the maintenance of such prisoners at 11*d.* each per day. In January, 1841, the county justices resolved that the borough justices had no jurisdiction to commit to the county house of correction, and such prisoners were detained till county justices attended to commit them. In September, 1842 (after the passing of this Act), another account was sent in on the same scale of charge. It was held that, notwithstanding this, the borough was liable, under this section (as well retrospectively as prospectively), to the actual expenses, which exceeded 11*d.* a head, of the maintenance, &c., of such prisoners, for that no special contract was subsisting between the borough and the county relative to them. *Reg.* v. *Mayor &c. of Birmingham*, 10 Q. B. 116.

See 13 & 14 Vict. c. 91, s. 5, post, as to the expenses of borough *assize prisoners* removed to a county gaol.

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Expenses of conveyance and maintenance of such prisoners how to be paid.

XX. And be it enacted, that the expense heretofore incurred or hereafter to be incurred in the conveyance, transport, maintenance, safe custody, and care of such prisoners as aforesaid, shall be paid out of a rate to be made and levied for that purpose by the council of such borough in the nature of a borough rate; and any such rate may be made and recovered in the same manner as any borough rate may be made or recovered; and the amount of all such expenses of conveyance, transport, maintenance, safe custody, and care of prisoners as aforesaid shall, in case of dispute, be settled by such barrister-at-law as shall be determined upon in writing between the visiting justices of such prison and the council of such borough; and in case no appointment of such barrister be agreed upon by the said parties within the space of fourteen days next after such dispute shall have arisen, such dispute shall be decided by the arbitration of a barrister, to be named as provided in the case of differences with respect to the payment of monies under contracts made by authority of an Act passed in the fifth year of the reign of King George the Fourth, intituled *An Act for amending an Act of the last Session of Parliament, relating to the building and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales.*

5 Geo. 4, c. 85.

An account of such expenses to be rendered.

XXI. And be it enacted, that an account in writing of the expenses due and payable, or claimed to be due and payable, in respect of the conveyance, transport, maintenance, safe custody, and care of

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such prisoners as aforesaid, shall be made out from time to time and signed by the clerk to the visiting justices of the prison to which such prisoners shall be committed, and delivered to the town clerk of the borough within which the offences shall have been committed, and such account shall be conclusive against such borough, unless some objection thereto shall be made in writing and signed by the town clerk of such borough, and delivered to the clerk of the said visiting justices within one calendar month next after such account shall have been delivered to such town clerk.

Such boroughs to be freed from county rate.

XXII. And be it enacted, that every such borough as aforesaid shall be freed from contributing to any rate in the nature of a county rate made for the county in which such borough is situated, in respect of the prosecution, conveyance and transport, maintenance, and safe custody and care of such prisoners as aforesaid, so long as such expenses shall be defrayed under the provisions of this Act(1).

Invalidity of grant of sessions of the peace not to alter liability.

XXIII. And be it enacted, that in case any grant of a separate court of sessions of the peace, heretofore or hereafter to be made, or purported to be made, to any such borough as aforesaid, shall be quashed, vacated, or adjudged to be invalid, such borough shall, notwithstanding, continue to be freed from the payment of rates in the nature of county rates for such county, and liable to the payment of the costs of the prosecution, conveyance and transport, maintenance, safe custody, and care of such

(1) See 12 & 13 Vict. c. 82, post.

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prisoners as aforesaid, in the manner hereinbefore provided, up to the time at which such grant shall have been quashed, vacated, or adjudged to be invalid, and thenceforth to the time of holding the general or quarter sessions of the peace at which the next rate in the nature of a county rate shall be made in respect of the prosecution, conveyance and transport, maintenance, safe custody, and care of prisoners for offences arising within the county within which such borough is situated, and no longer.

Act not to affect the validity of charters.

XXIV. And be it enacted, that nothing in this Act contained shall be deemed to affect any question which has arisen or may hereafter arise touching the validity of any charter of incorporation or grant of a separate court of sessions of the peace; but every rate to be made or levied as last hereinbefore provided, and every other proceeding under the authority of this Act, shall be valid, whether any such charter or grant is valid or invalid.

Interpretation of Act.

XXXII. And be it enacted, that in this Act the word "county" shall be taken to mean also riding, parts, division, or hundred; and the word "prison" shall be taken to mean also gaol or house of correction.

Act to extend to England only.

XXXIII. And be it enacted, that this Act shall not extend to Scotland or Ireland (1).

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(1) The sections omitted have not any relation to the object of this work.

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SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

Form of Mortgage and Charge upon the Borough Rates or Gaol Rates for securing Money borrowed by the Mayor, Aldermen, and Burgesses of any Borough.

THE mayor, aldermen, and burgesses of the borough [town *or* city] of —— by their council, at a special meeting of the said council, holden on the —— day of —— in pursuance of the powers given by an Act passed in the sixth year of the reign of her Majesty Queen Victoria, intituled [*insert the title of this Act*], do hereby mortgage and charge all the rates to be raised within the said borough [town *or* city] under the description of borough [*or* gaol] rates, with the payment of ——, which *G. H.* of —— hath agreed to lend, and hath now actually paid towards defraying the expenses of building [*or* rebuilding, repairing, *or* enlarging, *as the case may be,*] the gaol [*or* house of correction, court house, *or other necessary buildings, as the case may be,*] for the said borough [town *or* city]; and do hereby, by the council aforesaid, confirm the same unto the said *G. H.*, his executors, administrators, and assigns, for securing payment of —— and interest for the same after the yearly rate of —— by the hundred; and do order the treasurer for the said borough [town *or* city] to pay the interest of the said —— half-yearly as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said Act.

Given under the common seal of the borough [town *or* city], this —— day of —— in the year ——.

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MUNICIPAL ACT FURTHER AMENDMENT ACT.

5 & 6 VICT. CAP. 104.

An Act to explain and amend certain Enactments contained respectively in the Acts for the Regulation of Municipal Corporations in England and Wales, and in Ireland. [10*th August*, 1842.]

WHEREAS, by an Act passed in the session of Parliament held in the fifth and sixth years of the reign of his late Majesty, King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, it is (amongst other things) enacted, that no person shall be qualified to be elected or to be a councillor or an alderman of any borough during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council of such borough, during such time as he shall hold any office or place of profit, other than mayor, in the gift or disposal of the council of such borough; And whereas, by another Act passed in the session of Parliament held in the third and fourth years of the reign of her present Majesty, intituled *An Act for the Regulation of Municipal Corporations in Ireland*, it is (amongst other things) enacted, that no person shall be qualified to be elected or to be a councillor, or an alderman, or a municipal commissioner of any

5 & 6 Will. 4, c. 76.

3 & 4 Vict. c. 108.

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such borough, during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of any such council, commissioners, or charitable trustees of such borough; And whereas doubts have arisen as to the extent and meaning of the words "contract" and "office or place of profit" in the said enactments, and it is expedient that such doubts should be removed: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the passing of this Act, the word "contract" in the said respective enactments shall not extend or be construed to extend to any lease, sale, or purchase of any lands, tenements, or hereditaments, or to any agreement for any such lease, sale, or purchase, or for the loan of money, or to any security for the payment of money only (1).

The word "contract" not to extend to leases, sales, &c.

II. And be it enacted, that it shall not be lawful for any member of the council of any borough to vote or to take part in the discussion of any matter before the council in which such member shall, directly or indirectly, by himself or his partner or partners, have any pecuniary interest.

Members of council not to take part in discussion if pecuniarily interested.

III. And be it enacted, that, immediately from and after the passing of this Act, it shall be lawful for any person or persons against whom any original

Persons against whom suits have been commenced

(1) See 5 & 6 Will. 4, 76, s. 28, ante, p. 52, and note (6) thereto; and *Le Feuvre* v. *Lankester*, 3 E. & B. 530.

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for penalties respecting contracts may apply to have the same determined, upon payment of the costs.

writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted on or before the day of the passing of this Act, for the recovery of any pecuniary penalty or penalties incurred under the said enactments (by reason of any extension or construction of the word "contract" therein contained beyond or different from what is herein enacted) to apply to the court in which such original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, if such court shall be sitting, or, if such court shall not be sitting, to any judge of one of the superior Courts at Westminster or Dublin, as the case may be, for an order that such writ, suit, action, bill, plaint, or information shall be discontinued, upon payment of the costs thereof out of pocket incurred to the time of such application being made, such costs to be taxed according to the practice of such court; and every such court or judge is hereby authorised and required, upon such application, and proof that sufficient notice has been given to the plaintiff or plaintiffs, or to his or their attorney, of the application, to make such order as aforesaid; and upon the making such order, and payment or tender of such costs as aforesaid, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

Judges empowered to order suits commenced before the 8th Feb., 1842, to be discontinued, upon payment of costs.

IV. Provided always, and be it enacted, that in all cases in which any such writ, suit, action, bill, plaint, or information sued out or commenced on or before the eighth day of February one thousand eight hundred and forty-two shall have been renewed or continued before the passing of this Act, or upon

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which any declaration shall have been filed or delivered, or other proceeding had, after the said eighth day of February, and before the passing of this Act, it shall be lawful for such court or judge, upon such application and proof as aforesaid, to make such order as aforesaid, for discontinuing the same, upon payment of the costs out of pocket of all proceedings had on or before the said eighth day of February, to be taxed as aforesaid, and of such costs out of pocket, if any, of any proceedings had after the said eighth day of February, as the Court or judge making such order shall direct; and upon making such order, and upon payment or tender of such costs, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

and suits commenced subsequent to 8th Feb., 1842, to be discontinued without payment of costs.

V. Provided always, and be it enacted, that in all cases in which any such writ, suit, action, bill, plaint, or information shall have been sued out or commenced at any time subsequent to the eighth day of February, one thousand eight hundred and forty-two, it shall be competent for such Court or judge as aforesaid to make such order as aforesaid for discontinuing the same, without payment of any costs, and upon making such order such writ, suit, action, bill, plaint, or information shall be forthwith discontinued (1).

Act not to extend to any action in which judgment has passed.

VI. Provided always, and be it enacted, that nothing herein contained shall extend or be construed to extend to any action, bill, plaint, or information,

(1) See *Simpson* v. *Ready*, 11 M. & W. 344; ante, p. 54.

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or any legal proceeding of any kind whatsoever, in which any judgment shall have passed on or before the day of the passing of this Act; but such proceedings may be thereupon had and taken, and any such judgment may be dealt with in all respects, as if this Act had not passed.

Councillors, &c., not to be disqualified on account of having an interest in any lease of lands, &c.

VII. And be it enacted, that from and after the passing of this Act no municipal commissioner, councillor, alderman, or mayor, in any municipal corporation within the provisions of either of the said Acts, shall be deemed to have been or to be disqualified to be elected or to be such municipal commissioner, councillor, alderman, or mayor, by reason only of his having or having had, directly or indirectly, by himself or his partner, any share or interest in any lease, sale, or purchase of any lands, tenements, or hereditaments, or any agreement for any such lease, sale, or purchase, or for the loan of money, or in any security for the payment of money only, but all elections of municipal commissioners, councillors, aldermen, or mayors, as aforesaid, shall be deemed and taken to be and to have been valid (unless in cases where judgment may have been obtained before the passing of this Act), notwithstanding any such share or interest in any matters herein last aforesaid(1).

Office of sheriff not to be deemed an

VIII. And be it enacted, that from and after the

(1) See ante, 5 & 6 Will. 4, c. 76, s. 28, and note(6) thereto; and *Simpson* v. *Ready*, 12 M. & W. 736.

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passing of this Act the office of sheriff of any city, town, county of a city or county of a town (wherein the council are empowered by law to appoint a fit person to execute the office of sheriff), shall not be deemed to be an office or place of profit within the meaning of the said Act, so as to create any disqualification for any office in the said Act mentioned(1). Office of profit.

INCORPORATION OF BOROUGHS CONFIRMATION ACT.

5 & 6 VICT. CAP. 111.

An Act to confirm the Incorporation of certain Boroughs, and to indemnify such Persons as have sustained Loss thereby. [12*th August*, 1842.]

WHEREAS, since the passing of an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, charters of incorporation have been granted to certain boroughs in England, in pursuance of the provisions of the said Act, and of the Acts afterwards 5 & 6 Will. 4, c. 76.

(1) See 5 & 6 Will. 4, c. 76, ss. 28 and 61, ante, pp. 47, 107.

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passed for amending the said Act; And whereas doubts have arisen respecting the validity of the said charters(1), and it is expedient that such doubts be removed; Be it declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said several charters of incorporation, and also all grants of separate courts of sessions of the peace, issued or granted to any of the said boroughs, and all acts or proceedings done or had in pursuance thereof respectively before the passing of this Act, shall be deemed good and lawful from the time of such several grants, acts, and proceedings respectively.

Confirmation of certain charters and proceedings in pursuance thereof.

II. And be it enacted, that every officer of any such borough, or of any county or any division of a county in which any such borough is situated, who

Compensation to certain officers.

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(1) This statute was passed by reason of the doubts entertained as to the validity of the charters granted to Birmingham, Manchester, and Bolton, in consequence (principally) of the petitions for the charters not having, as was alleged, proceeded from a majority of the inhabitant householders. See *Rutter* v. *Chapman*, 8 M. & W. 1, in note (2) to 7 Will. 4 & 1 Vict. c. 78, s. 49, ante, p. 373. The validity of the grant of a separate court of sessions of the peace to the borough of Birmingham was also questioned by reason of the non-existence of a gaol in the borough at the time of the petition for such grant. See *Reg.* v. *Bourchier*, 3 Q. B. 641, 2 G. & D. 737, in note (1) to 5 & 6 Will. 4, c. 76, s. 103, ante, p. 192. See also 11 & 12 Vict. c. 93, and 13 & 14 Vict. c. 42, post, confirming the incorporation of certain other boroughs.

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was in any office of profit at the time of the granting of any such charter of incorporation, or of any grant afterwards made by his late Majesty or by her Majesty before the passing of this Act, whose office shall have been abolished, or who shall have been removed from his office, or who shall have been deprived of any part of the fees and emoluments of his office, in consequence of any such grant, shall be entitled to have an adequate compensation, to be assessed by the council and paid out of the borough fund, for the salary, fees, and emoluments of the office which he shall so cease to hold, or for such part thereof as he shall have been so deprived of, regard being had to the manner of his appointment to the said office and his term or interest therein, and all other circumstances of the case; and all the provisions of the first-recited Act relating to the claim of any corporate officer for compensation, and to the manner of determining and securing the amount of such compensation, shall apply severally to the officers hereby indemnified: Provided always, that the statements to be delivered to the town clerks of the said several boroughs by the said officers shall set forth the fees and emoluments in respect whereof they shall claim compensation during five years next before the several times when the profits of their several offices were first affected by any of the said grants respectively (1).

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(1) The clerk to the stipendiary magistrate for the townships of Manchester and Salford, appointed under the 53 Geo. 3, c. 72, was held not to be an officer of a borough, county, or

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MUNICIPAL ACT FURTHER AMENDMENT ACT.

6 & 7 VICT. CAP. 89.

An Act to amend the Act for the Regulation of Municipal Corporations in England and Wales.

[24*th August*, 1843.]

WHEREAS, by an Act passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, provisions were made for the election of corporate officers in certain boroughs, and for determining the times and manner of such election; but the

5 & 6 Will. 4, c. 76.

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division of a county, within this section. *Reg.* v. *Council of Manchester*, 9 Q. B. 458.

To entitle a party to claim compensation under this Act, as an officer of a "division of a county" in which the borough is situated, he must be shewn to be an officer of the *entire* division. And therefore, where it appeared that the Manchester division of the county of Lancaster consisted of forty-three townships, and that the party applying for compensation had for many years acted as clerk to the justices of that division, attending at the New Bailey, in Salford (one of those townships), where the greater part of the business was transacted; but that amongst the forty-three townships there were some at which justices attended and held petty sessions, and employed other persons as clerks, it was held that the party was not entitled to compensation as an officer of a division of a county. *Id.*

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provisions in the said Act have not in all cases been duly complied with: And whereas, by an Act passed in the first year of the reign of her present Majesty, intituled *An Act to amend an Act for the Regulation of Municipal Corporations in England and Wales*, it was among other things declared, that, after the passing of that Act, every application to the Court of Queen's Bench, for the purpose of calling upon any person to shew by what warrant he claims to exercise the office of mayor, alderman, councillor, or burgess in any borough, shall be made before the end of twelve calendar months after the election, or the time when the person against whom such application shall be directed shall have become disqualified, and not at any subsequent time: And whereas doubts have arisen whether, notwithstanding the said last-mentioned enactment, applications in the nature of quo warranto may not still be successfully made against any person holding the office of mayor on the ground that such mayor was not duly qualified to be so elected mayor by reason of some defect or informality in his previous election to the office of alderman or councillor, although more than twelve calendar months may have elapsed since such election to the office so alleged to have been informal or defective, and likewise against other corporate officers upon grounds of the like nature: And whereas also in certain boroughs the town councils elected under the said recited Act omitted to appoint as therein directed who of the aldermen first elected under that Act should go out of office at the expiration of the term therein mentioned: And whereas also in some boroughs, at the said first

1 Vict. c. 78.

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election of aldermen after the passing of the said first-recited Act, less than the full number required by the said Act were elected to such office by reason of equality of votes as to some of the persons nominated, and at the second election of aldermen under the provisions of the said first-recited Act, other aldermen were elected to supply and make up such deficiency, but by inadvertence, and under a mistake of law, a greater number were elected to such office than ought to have been so elected, and great inconvenience, vexation, and expense have been incurred and sustained by reason of the premises, insomuch that the functions of the corporate bodies in such boroughs have been and are in effect suspended; and it is expedient to provide a remedy for such mischief: And whereas the said first-recited Act requires further amendments: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that no election of any mayor of any of the boroughs named in schedules (A.) and (B.) of the said first-recited Act, or in any borough to which a charter of incorporation may have been or may be hereafter granted under the provisions of that Act and of the secondly recited Act, or either of them, which has already taken place, or shall hereafter take place, shall be liable to be questioned by reason of a defect in the title of such person to the office of alderman or councillor to which he may have been previously elected, unless application shall have been made to the Court of Queen's Bench, calling upon

No election of a mayor in certain boroughs to be called in question for defect of title, unless by quo warranto, within twelve months from the election.

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such person to shew cause by what warrant he claims to exercise such office of alderman or councillor, within twelve calendar months after such his election to the said office of alderman or councillor (1); and that from and after the passing of this Act every election heretofore made, or hereafter to be made, to the office of mayor, alderman, councillor, or any other corporate officer (2), in any of the boroughs aforesaid, which shall not be or have been called in question by such application to the Court of Queen's Bench within twelve calendar months from such election shall be deemed to have been to all intents and purposes a good and valid election.

All elections of corporate officers not so called in question to be deemed valid.

II. And be it enacted, that, in any and every of the said boroughs where a greater number of persons shall have been elected to and have taken upon themselves the office of alderman than is authorised by the said first-recited Act, or in which a greater number than is authorised by the said first-recited Act shall claim to be aldermen of the said borough, the council of such borough shall, at the quarterly meeting to be held on the ninth day of November next after the passing of this Act, before proceeding to the election of the mayor, or to any other business, declare which of the said persons so elected or claiming to be aldermen, to the number specified by

Provision where a greater number of persons shall have been elected or claim to be aldermen of any borough than is authorised by 5 & 6 Will. 4, c. 76.

(1) See 7 Will. 4 & 1 Vict. c. 78, s. 23, ante, p. 345, and the case of *Reg.* v. *Preece*, 5 Q. B. 94, Dav. & M. 156, in the note thereto, p. 346.

(2) See note (1), post, p. 467.

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the said first-recited Act, shall be the aldermen of such borough, and thereupon the persons so declared shall be the aldermen of such borough, and the person not included in the number so declared shall from thence *ipso facto* cease to be aldermen of the said borough respectively, or to exercise any of the functions of such office (3).

Provision where no declaration was made in the year 1835, as to which of the aldermen should first go out of office.

III. And be it enacted, that in any and every borough wherein it shall not have been declared by the councillors thereof immediately after the first election of aldermen in the year one thousand eight hundred and thirty-five who of the aldermen so elected should go out of office in the year one thousand eight hundred and thirty-eight, and by reason of such omission the provisions of the said first-recited Act as to the retirement and election of aldermen cannot be carried into effect, the councillors of such borough shall and may, at the said quarterly meeting of the council to be held on the ninth day of November next after the passing of this Act, declare and appoint who shall be the aldermen who shall go out of office on the ninth day of November in the year one thousand eight hundred and forty-four, and the persons so named shall be the persons who shall then go out of office accordingly (4).

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(3) See 7 Will. 4 & 1 Vict. c. 78, s. 2, and the note, ante, p. 329.

(4) This provision remedies the mischief which, in the case of *Reg.* v. *Alderson*, 1 Q. B. 878, 1 G. & D. 429, was held to have vitiated the election of aldermen in 1838. See 5 & 6 Will. 4, c. 76, s. 25, and note(3) thereto, ante, p. 45.

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Provision as to proceedings already commenced.

IV. And be it enacted, that no proceeding commenced before the passing of this Act and still pending in the Court of Queen's Bench against any person claiming to be mayor or alderman of any of the aforesaid boroughs upon any ground which before the passing of this Act would have been sufficient to invalidate the title of such person, but which after the passing of this Act would not be sufficient for that purpose, shall after the passing of this Act be further prosecuted: Provided always, that the prosecutor or relator shall be entitled to receive from the defendant in every such proceeding all such costs, to be taxed as between attorney and client according to the practice of such Court, as have been *bonâ fide* incurred by such prosecutor or relator in such proceeding before the passing of this Act.

Provision for expediting certain proceedings by way of mandamus and quo warranto.

V. And whereas it is expedient to render certain proceedings, by way of quo warranto and mandamus, so far as they affect corporate offices (1) in boroughs, more summary and expeditious; Be it therefore enacted, that, from and after the passing of this Act, in all cases of intended application to the Court of Queen's Bench, either for a mandamus to proceed to an election of any corporate officer or officers in any of the aforesaid boroughs, or for an information

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(1) This statute is applicable only to such offices as are held by the *governing part* of a corporation: a *burgess*, therefore, is not a *corporate officer* within this section. *Reg.* v. *Milner*, 5 Q. B. 589; Dav. & M. 495. Neither is the *coroner* of a borough, appointed under 5 & 6 Will. 4, c. 76, s. 62. *Reg.* v. *Grimshaw*, 5 Dowl. & L. 249. See 7 Will. 4 & 1 Vict. c. 78, ss. 23 and 24, ante, pp. 344, 346.

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in the nature of a quo warranto against any person claiming to be a corporate officer of and in any of the said boroughs, it shall be lawful for the party intending to make such application to give notice in writing thereof to the party to be affected thereby at any time not less than ten days before the day in the said notice specified for making such application, in which notice shall be set forth the name and description of the party by whom such application will be made, together with a statement of the grounds thereof, and at the same time to deliver with such notice a copy of the affidavits whereby the application will be supported; and thereupon it shall be lawful for the said last-mentioned party to shew cause in the first instance against such application; and if no sufficient cause be shewn it shall be lawful for the said Court of Queen's Bench, on proof of the due service of such notice and statement, and of the delivery of a copy of such affidavits as may be used for the purpose of supporting such application, to make the rule for such mandamus or information absolute, if the said Court shall so think fit in the first instance, and also, if they shall so think fit, to direct that any writ of mandamus thereby ordered to be issued shall be peremptory in the first instance; and also that the venue in any information thereby ordered to be filed shall be laid in the county of Middlesex, or in the city of London, and that the issue or issues of fact thereon, if any, shall be tried at the sittings at Nisi Prius of the said Court at Westminster, or in London, by a jury of the same county or city respectively.

Office of the treasurer not

VI. And whereas the office of treasurer of and for

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the aforesaid boroughs is an office of great trust, and an annual appointment to such office is inconvenient and unnecessary; Be it therefore enacted, that so much of the said hereinbefore first-recited Act as provides that the council in every borough shall in every year appoint a fit person to be treasurer of such borough shall be and the same is hereby repealed, and that the council of every borough shall, on the ninth day of November next after the passing of this Act, or on the ninth day of November next after such borough shall be incorporated, appoint a fit person, not being a member of the council, to be the treasurer of such borough, who shall thenceforth hold his office during the pleasure of the council for the time being; and on the happening of any vacancy thereafter, by death, resignation, amotion, or otherwise, the council shall proceed to the appointment of a successor, either at any of the general quarterly meetings of the council, or at a special meeting to be convened for that purpose, so that in no case such appointment be delayed beyond twenty-one days from the happening of the vacancy (1).

to be subject to annual election, but to be during the pleasure of the council.

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(1) See 5 & 6 Will. 4, c. 76, s. 58, and note (2) thereto, ante, p. 99.

Where, the treasurer having been duly appointed annually from the passing of the 5 & 6 Will. 4, c. 76, until this Act, the same person was then, in obedience to this Act, re-appointed during the pleasure of the council; this change in its tenure was held not to discharge a surety for the treasurer's due accounting, the nature and duties of the office remaining the same. *Mayor &c. of Berwick* v. *Oswald*, 1 E. & B. 295; affirmed on error, by a majority of five judges to three, 3 E. & B. 653.

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Provision for the appointment of a deputy recorder in certain cases.

VII. And whereas inconvenience has arisen and may hereafter arise by reason that in the said first-recited Act no provision is made for the holding of the borough sessions at the time appointed by public notice for that purpose, in case of the sudden illness or unexpected and unavoidable absence of the recorder on or immediately before the day on which the sessions for any borough shall have been appointed to be held, or during the holding of such sessions(1); and it is desirable to provide against such inconvenience; Be it therefore enacted, that so much of the said first-recited Act as provides "that in case of sickness or unavoidable absence the recorder of any borough shall be empowered, under his hand and seal, with the consent of the council of the said borough, to appoint a deputy recorder, being a barrister of five years standing, to act for him at the quarter sessions then next ensuing, and no longer or otherwise," be and the same is hereby repealed.

In case of sickness or absence the recorder may appoint a deputy recorder.

VIII. And be it enacted, that, in case of sickness or unavoidable absence, the recorder of any borough shall be and he is hereby empowered, under his hand and seal, to appoint a deputy recorder, being a barrister of five years standing, to act for him at the quarter sessions then next ensuing or then being held, and not longer or otherwise: Provided nevertheless, that such sessions shall not be deemed to have been illegally held, nor the acts of any deputy

(1) See note(3) to 5 & 6 Will. 4, c. 76, s. 103, ante, p. 194.

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recorder invalidated, by reason of the cause of the absence of the recorder not being deemed to be unavoidable within the meaning of this Act.

ARBITRATION BETWEEN COUNTIES AND BOROUGHS ACT.

7 & 8 VICT. CAP. 93.

An Act to enable Barristers appointed to arbitrate between Counties and Boroughs to submit a Special Case to the Superior Courts.

[*9th August*, 1844.]

WHEREAS, by an Act passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, and by another Act passed in the sixth year of the reign of her Majesty, intituled *An Act to amend the Law concerning Prisons*, provision was made for the appointment of barristers-at-law to arbitrate in cases of difference concerning certain accounts, and the amounts of certain expenses therein mentioned (1); And whereas it is expedient that the treasurer of the county, the visiting

5 & 6 Will. 4, c. 76.

5 & 6 Vict. c. 98.

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(1) See 5 & 6 Will. 4, c. 76, s. 8, ante, p. 15; s. 114, p. 209; s. 117, p. 216; and 5 & 6 Vict. c. 98, s. 20, ante, p. 450.

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justices of the prison, and the council of the borough, or any of them, affected by any award which may be made by any barrister under the authority of either of the said Acts, should be enabled to obtain in a summary way the opinion of one of the superior Courts of common law at Westminster, upon any point of law arising out of any of the matters referred to such barrister: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in any case in which a barrister-at-law shall have been or shall hereafter be named, as in the said recited Acts or either of them is mentioned, to arbitrate between the parties, such barrister-at-law, upon the requisition in writing of the treasurer of the county, or of the visiting justices of the prison, or of the town clerk of the borough, on behalf of the council of the borough who shall be interested in the decision of such barrister, shall be empowered, if he shall think fit, before making his award, to state one or more special case or cases touching any of the matters referred to such barrister-at-law for the opinion of such one of the superior Courts of common law at Westminster, as he shall direct, or to raise in any award to be at any time made by him any question or questions for the opinion of such Court; and such Court shall hear and determine the matter according to the practice of the Court upon special cases, and make such order as to the costs, and by, and to whom, and in what manner the same shall be paid or borne, as to such Court shall seem meet; and the decision of the Court

Arbitrating barrister, upon receiving a requisition in writing from treasurer of the county or visiting justices of the prison, &c., may state a special case, touching any matter referred to him, for the opinion of a superior Court.

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shall be binding on such barrister in making his award.

In case barrister die before making his award, another one to be chosen.

II. And be it declared and enacted, that in case any barrister who shall have been or shall hereafter be named in pursuance of the said recited Acts or either of them, or of this Act, shall die or refuse to act, or be disabled from acting, either from ceasing to practise as a barrister, or for any other reason, before making his award, the said several parties in the said several Acts mentioned shall be authorised and required to name another barrister-at-law for all the purposes in the said several Acts mentioned, or any of them, in like manner as if no appointment had been made under the same; and the barrister so newly named shall have the same authority to decide the matters in difference as if no other appointment had been made; and in every such case in which, before the passing of this Act, a second barrister has been appointed to settle or determine any matters in difference left unsettled or undetermined by the barrister first appointed for that purpose, the appointment of such second barrister shall be deemed good, and the barrister so secondly appointed shall be deemed to have and to have had from his appointment the same authority as if appointed under this Act.

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JEWS' DECLARATION ACT.

8 & 9 VICT. CAP. 52.

An Act for the Relief of Persons of the Jewish Religion elected to Municipal Offices.

[31*st July*, 1845.]

WHEREAS the declaration prescribed by an Act of the ninth year of the reign of King George the Fourth, intituled *An Act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments* (1), upon admission into office in municipal corporations, cannot conscientiously be made and subscribed by persons of the Jewish religion: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, instead of the declaration required to be made and subscribed by the said recited Act, every person of the Jewish religion be permitted to make and subscribe the following declaration, within one calendar month next before or upon his admission (2) into

9 Geo. 4, c. 17.

Persons professing the Jewish religion, on accepting the office of mayor, &c., to make a declaration.

(1) See this Act, post, Appendix; and s. 50 of the 5 & 6 Will. 4, c. 76, and note (3) thereto, ante, p. 83.

(2) See *Reg.* v. *Humphery*, 10 A. & E. 365, ante, p. 83.

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the office of mayor, alderman, recorder, bailiff, common councilman, councillor, chamberlain, treasurer, town-clerk, or any other municipal office in any city, town corporate, borough, or cinque port within England and Wales or the town of Berwick-upon-Tweed:—

'I, A. B., being a person professing the Jewish religion, having conscientious scruples against subscribing the declaration contained in an Act passed in the ninth year of the reign of King George the Fourth, intituled *An Act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments*, do solemnly, sincerely, and truly declare, that I will not exercise any power, or authority, or influence which I may possess by virtue of the office of —— to injure or weaken the Protestant Church as it is by law established in England, nor to disturb the said church, or the bishops and clergy of the said church, in the possession of any right or privileges to which such church or the said bishops and clergy may be by law entitled.' Declaration.

II. And be it enacted, that such declaration shall, with respect to any such office, be of the same force and effect as if the person making it had made and subscribed the declaration aforesaid contained in the said Act of the ninth year of the reign of King George the Fourth (1). Declaration to be as valid as that of 9 Geo. 4, c 17.

(1) See 1 & 2 Vict. cc. 5 and 15, for the relief of Quakers, Moravians, and Separatists accepting municipal offices, ante, pp. 384, 386.

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BOROUGH AND WATCH RATES ACT.

8 & 9 VICT. CAP. 110.

An Act for the better collecting Borough and Watch Rates in certain Places. [*8th August*, 1845.]

WHEREAS, by an Act passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, authority was given to the councils of boroughs in certain cases to levy borough rates for the purposes of the said Act; And whereas the powers and directions given by the said Act, and certain other Acts relating thereto, for the levying, assessing, and collecting such borough rates and watch rates, are found to be insufficient for that purpose (1): Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in every case in which any parish or place liable to support its own poor, or any extra-parochial place, shall lie partly within and partly without any such borough, and

5 & 6 Will. 4, c. 76.

Overseers for parts of parishes and places within boroughs to raise district rates.

(1) See 5 & 6 Will. 4, c. 76, s. 92, ante, pp. 168, 173; 7 Will. 4 & 1 Vict. c. 78, s. 29, ante, p. 357; and c. 81, s. 3, ante, p. 382; and the notes to those sections. See also 12 & 13 Vict. c. 65, post, p. 501.

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the council of such borough hath appointed or hereafter shall appoint one or more persons to act as overseer or overseers within that part of such parish or place, or those parts of such parishes or places which is or are within the same borough, for making, levying, and collecting borough rates or watch rates made or hereafter to be made therein, the person or persons so appointed shall be empowered to levy and raise, by an equal rate or assessment upon all the property within each of the parts of parishes or places respectively for which he or they shall be so appointed, which, if such part were a parish maintaining its own poor, would be rateable to the relief of the poor, such sums of money as shall be required in order to raise the several sums assessed upon such parts of parishes or places respectively, or to reimburse such person or persons as aforesaid such sums of money as he or they shall have paid for any borough rate or watch rate made or hereafter to be made by the council of the borough wherein such part of a parish or place, or parts of parishes and places, respectively, shall be situated; such rate or assessment, or respective rates or assessments, to be paid by the occupier or occupiers for the time being of such rateable property as aforesaid; and that the person or persons so appointed or to be appointed to act as such overseer or overseers for the purposes aforesaid shall have and exercise, in and for the purpose of making, levying, and collecting every such rate or assessment as aforesaid, all the powers which by the laws now or hereafter to be in force overseers of the poor have or may have for making, assessing, collecting, and recovering rates for the relief of the poor within their several

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parishes; and every such rate or assessment made or to be made by any person or persons appointed or to be appointed to act as overseer or overseers of the part of any parish or place within any such borough shall, for the purposes of this Act, be called a district rate.

District rates to be allowed and published.

II. And be it enacted, that no such district rate, nor any separate rate made by overseers of the poor for raising a watch rate as hereinafter is mentioned, shall be demanded, collected, or payable, until the same shall have been allowed by two or more justices of the peace usually acting in and for such borough, and shall also have been published in like manner as rates for relief of the poor are by law required to be allowed and published.

Persons aggrieved may appeal.

III. Provided always, and be it enacted, that any person who shall think himself aggrieved by any such district rate as aforesaid, or by any separate rate to be made by any overseers of the poor for raising a watch rate as hereinafter is mentioned, may appeal to the recorder of the borough in which such rate has been made, at the next quarter session for the same borough, or, in case there shall be no recorder in such borough, to the justices at the next court of quarter sessions for the county within which such borough is situated, or whereunto it is adjacent; and such recorder or justices respectively shall hear and determine the same, and shall award relief in the premises as in the case of an appeal against any rate made for the relief of the poor.

District rates to be

IV. And be it enacted, that every such district

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rate as aforesaid, made for the purpose of raising money to pay or reimburse any borough rate or watch rate charged by the council of the borough upon such part of a parish or place, and every separate rate to be made by overseers of the poor for raising a watch rate as hereinafter mentioned, may be at such amount or rate in the pound as may be necessary for raising the sum or respective sums so charged by such council, so that no such district rate, or rate for raising a watch rate, exceed twopence in the pound of the annual value of property rateable thereunto, beyond the rate in the pound at which the council of the same borough shall have computed the general borough rate or watch rate so laid or charged by them; and that the person or persons collecting such district rate shall be liable to account as an officer appointed by the council of the borough in or for any part of which he shall act, and shall be liable to the same penalties, remedies, and proceedings in all respects, for refusing or neglecting to account and pay over the monies from time to time remaining in his hands, to which other officers appointed by the council are liable; and in case of there being a surplus in the hands of such person or persons arising from any district rate, above the amount for raising which such district rate was made, then such surplus shall be paid to the treasurer of the borough fund, to the credit of the place within and for which such district rate was made, and go in part of the next rate of the like denomination to be made and laid on such place by the council of such borough; and in regard to separate rates made by overseers of the poor for raising watch rates as is hereinafter men-

sufficient to raise the amount required.

Collectors to account.

Surplus of district rate to be paid to the treasurer.

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tioned, such overseers shall account for the money collected under or by virtue of such separate rates in like manner as for money collected under rates made for the relief of the poor; and in case of there being a surplus in the hands of such overseer, arising from any such separate rate made for raising a watch rate, above the amount to raise which such separate rate was made, then such surplus shall be paid to the treasurer of the borough fund, to the credit of the place within and for which such separate rate was made, and go in part of the next watch rate to be made and laid on such place by the council of such borough.

Separate rate made by overseers for raising watch rates to be accounted for, and surplus paid to the treasurer.

V. And be it enacted, that it shall be lawful for the council of the borough in which any district rate, or any separate rate to be made by overseers of the poor for raising a watch rate as hereinafter mentioned, shall be made, or for any committee of the council appointed for that purpose, on application by or on behalf of any person rated in any such district rate, or rate for raising a watch rate, to be discharged therefrom, and on proof of his or her inability, through poverty, to pay the amount charged upon him or her by such district rate, or rate for raising a watch rate, to order that such person shall be excused from the payment of such district rate, or rate for raising a watch rate, and to strike out his or her name therefrom; and the sum at which such person was so rated in such district rate, or rate for raising a watch rate, shall not thereafter be collected, nor shall any person be charged therewith, or in any manner called or liable to

Persons rated may be excused on account of poverty.

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account for the same, or for omitting to collect or receive the same.

Watch rates to be charged only upon persons liable thereto.

VI. And be it enacted, that, in every case in which a part only of any parish or place liable to maintain its own poor, and situated within any borough, shall be liable to watch rate, the overseers of the poor of such parish or place shall not pay the amount of any watch rate charged by the council of such borough upon such parish or place out of money collected from any rate or rates for the relief of the poor, but shall make a separate rate or assessment upon the part or parts only of such parish or place liable to watch rates for raising and paying the same watch rate, which rate shall be made in like manner, and under like regulations, and with like means and remedies for recovery thereof, as are herein contained in relation to district rates.

For recovery of rates.

VII. And be it enacted, that it shall be lawful for the person or persons appointed or to be appointed to act as overseer or overseers for making, levying, and collecting borough rates and watch rates in the parts of parishes or places situate within the limits and jurisdiction of any city or borough as aforesaid, or any of them, and for the overseers of the poor making any separate rate or assessment for the purpose of raising the amount of any watch rate, by warrant from any two justices of the peace usually acting in and for the borough wherein the parishes, parts of parishes or places, in or for which any district rate, or rate for raising a watch rate, may be made, shall be situated, to levy upon every person who shall refuse to pay the amount assessed

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or charged upon him or her by any such district rate, or rate for raising a watch rate, according as they shall be assessed, the amount so assessed or charged upon him, her, or them, together with the costs and charges of recovering and enforcing payment of the same, to be ascertained by such justices, by distress and sale of the offender's goods, rendering to the parties the overplus; and in default of such distress it shall be lawful for any two such justices of the peace to commit him or them to the common gaol of or used for the same borough, there to remain, without bail or mainprize, until payment of the said amount and arrearages.

Overseers may be appointed for two or more parts of parishes.

VIII. And be it enacted, that whenever there shall be within any borough two or more parishes or places, each separately maintaining its own poor, or two or more extra-parochial places, and each of them partly within and partly without the limits and jurisdiction of such borough, it shall be lawful for the council of such borough to appoint some one person or some two persons to act as overseer or overseers for making, levying, and assessing district rates and watch rates within any two or more of the parts of parishes or places, or within all the parts of parishes or places lying within the limits and jurisdiction of such borough, without regard to the residence of the person or persons so to be appointed; and every person appointed to act as an overseer for the making, levying, and collecting district or watch rates under the provisions of this Act, and the Acts herein recited, shall be allowed and paid out of the borough fund such allowances or remuneration for his services as the council shall direct.

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BOROUGH POLICE SUPERANNUATION FUND ACT.

11 & 12 VICT. CAP. 14.

An Act for authorising a Borough Police Superannuation Fund. [22*nd April*, 1848.]

WHEREAS an Act was passed in the sixth year of the reign of his late Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, whereby the council to be elected for any borough within the provisions of the said Act was directed to appoint a watch committee, and such committee was directed to appoint from time to time, as occasion should require, a sufficient number of fit men to act as constables for preserving the peace by day and by night, which constables are usually called the police force of such borough; and the said watch committee was thereby authorised to frame regulations for rendering such constables efficient in the discharge of their duties; and the treasurer of each borough was thereby directed to pay to such constables such salaries, wages, and allowances as such watch committee, with the approbation of the council, should order to be paid, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as should be disabled by bodily injury received, or be

5 & 6 Will. 4. c. 76.

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worn out by length of service (1); And whereas it might tend to the encouragement of such constables to continue in such service, and to behave themselves in an orderly manner, if the council were enabled to establish a superannuation fund in each borough, from which fund each police constable, on the events hereafter mentioned, shall be entitled to have and receive the allowance hereinafter mentioned, independently of any payment that may be awarded to him under the provisions of the Act above mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled and by the authority of the same, that it shall be lawful for the town council of any borough within the provisions of the said Act, or subsequently incorporated, if it see fit, to declare that a police superannuation fund shall be established in such borough, and thereupon such police superannuation fund shall be established accordingly, and the provisions of this Act shall thenceforth be in full force and effect.

Councils of boroughs may establish police superannuation funds.

II. And be it enacted, that there shall be thenceforth deducted from the pay of every constable belonging to the police force of such borough, either as superintendent or head officer of the police, or as inspector, acting inspector, serjeant, or private constable, or clerk, a weekly sum, as nearly as may be equal to one thirty-sixth part of his weekly pay and emolu-

Superannuation funds to be supported by contributions of the police force, &c.;

(1) See 5 & 6 Will. 4, c. 76, ss. 76, 77, 82, ante, pp. 141, 143, 146.

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ments (clothing excepted), which said sums shall be so deducted from every constable holding any such office, rank, or situation respectively, by whatever name or title they may respectively be denominated in such force; which sums so deducted, and also all monies accruing from fines imposed on any of the constables for misconduct, and all monies arising from the sale of worn or cast-off clothing supplied for the use of the police, and all monies paid for the service of summons or orders and execution of warrants by the police, shall from time to time be paid into a separate fund of such borough, to be called the "Police Superannuation Fund;" and such fund, and the accounts thereof shall be kept separate from the borough fund, but shall be in all respects managed and audited like the other funds of such borough, and shall be from time to time applied in payment of such superannuation or retiring allowances to police constables as hereinafter mentioned; (that is to say,) if he shall have served as police constable in the said police force for fifteen years successively as a private police constable, or as serjeant or inspector, acting inspector, superintendent, or head officer, or any or all of those ranks, he shall be entitled then to retire on a yearly superannuation allowance of an amount equal to half his full pay; but if he shall then be able and willing to continue to serve as a police constable, and the watch committee shall consent thereto, he shall then receive his full pay as a constable from the borough fund, and also one third, but no more, of the above named allowance from the superannuation fund; and when he shall have served as aforesaid for twenty years, he shall be entitled to

and to be kept separate from the borough fund.

Rates of superannuation of retiring allowances.

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retire on a yearly pension equal to two-thirds of his full pay; but if he shall then be able and willing still to serve as a police constable, and the watch committee shall consent thereto, he shall then receive his full pay as a constable from the borough fund, and also one-third part, and no more, of the said last-named allowance from the superannuation fund; and if at any time any police constable so entitled to a retiring pension, but receiving a reduced pension, while continuing to serve as a constable, shall retire from the police force, he shall thenceforth receive the full pension he would have been entitled to receive had he not continued so to serve: Provided always, that if any police constable who shall have served the necessary period before superannuation shall have so served in different ranks or capacities, his superannuation allowance shall be granted to him for a like number of years respectively in which he served in such several ranks or capacities, according to the rate of pay of each of the said several ranks or capacities.

If constable has served in different ranks, rate of superannuation to be regulated accordingly.

III. And be it enacted, that no police constable shall be entitled to be superannuated (1) who is under fifty years of age, unless he be reported, in writing, by the surgeon to the police force, to be unfit for further service in the force from infirmity of body or mind.

No constable to be superannuated under fifty, unless unfit for service.

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(1) The word "superannuated" here includes all persons who participate in any of the funds or allowances mentioned in sect. 2. Therefore it is a condition precedent to participating in any of them, that the constable shall not be under fifty years of age. *Hobson* v. *Mayor &c. of Kingston-upon-Hull*, 4 E. & B. 986.

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Cases in which superannuation may be ordered by the watch committee, upon certificate of the police surgeon.

IV. And be it enacted, that if any party shall have served with diligence and fidelity in the police force for ten years successively, and from injury received in the service, or from infirmity of mind or body, shall become incapable of discharging the duties of his office, and such last-named circumstance shall be certified by the police surgeon for the time being, thereupon it shall be lawful for the watch committee to order such constable to be superannuated, and to receive out of the police superannuation fund any superannuation allowance which such watch committee shall see fit to order, not exceeding half his full pay as before mentioned.

Constables dismissed or retiring to forfeit all claim, but if restored may have time of former service allowed.

V. And be it enacted, that nothing herein contained shall be construed so as to prevent the dismissal of any police constable, who shall thereupon, or upon his retiring from the said police force, forfeit all claim upon the superannuation fund; but if restored to the said police force, the watch committee may, if it see fit, at any time make an order enabling him to have the time of his former service reckoned in as time served in respect of superannuation, and thereupon it shall be so reckoned accordingly.

Monies paid to superannuation fund to be employed in aid of borough fund, which shall be answerable for the amount, with interest.

VI. And be it enacted, that, until the town council of such borough shall otherwise direct, the monies belonging to such superannuation fund shall be paid over to the treasurer of the borough, and employed in aid of the borough fund, and such borough fund shall be liable and answerable for the amount thereof and of every part thereof when and as the same shall become liable under the provisions

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hereof, and for all accumulations and interest thereon, after the yearly rate of five pounds in the hundred pounds; and a separate account shall nevertheless continue to be kept and audited, and a debtor and creditor account kept, of all receipts and payments made as between the borough fund and police superannuation fund: Provided always, that it shall be lawful for the town council to order the same or any part thereof to be invested in Government stock or real security in the name of "the treasurer of the borough of [*here insert the name of the borough*] for the time being;" and immediately upon such investment, so long as the same shall remain so invested, the borough fund shall cease to be liable for the monies so invested, or any interest thereon, but the dividends on such stock shall from time to time be received by such treasurer, and shall be by him carried to the credit of such superannuation fund; and it shall be lawful for the said council at any time to order the said treasurer to re-sell such funds, and place the produce thereof again in the borough fund, subject to the like rules as before mentioned.

Power to town council to invest monies in government securities;

and also to re-sell and replace the same in borough fund.

VII. And be it enacted that it shall be lawful for the town council of any borough, if it see fit, to declare that any superannuation fund heretofore established in the police force of such borough shall, after the passing of this Act, be deemed to be, and the same shall thereupon be, a superannuation fund under this Act, and shall thereafter be in all respects regulated according to the provisions hereof.

Provisions of this Act, if town council see fit, to apply to existing superannuation funds.

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VIII. And be it enacted, that in case the superannuation fund shall become exhausted, it shall be lawful for the town council, if it see fit, to cause money to be advanced on account thereof out of the borough fund by the treasurer, who shall thereupon receive the funds coming to such superannuation fund from time to time on account of the borough fund, till such advances shall have been paid off; but if the town council shall decline to make any such advance, then the respective payments to all parties entitled to superannuation from the said fund shall be reduced *pro ratâ*, during such time as the said fund shall be insufficient to pay the whole of the superannuation chargeable thereon in full; but the amount of such reductions shall nevertheless be a charge on the said fund, payable whenever afterwards the said fund shall be capable of paying the total amount thereof to all the said parties whose superannuations shall have been so reduced.

If fund shall be exhausted, town council may advance money on account thereof;

but if town council decline to advance, superannuation payments to be reduced pro ratâ.

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PRISONS BUILDING, &c. ACT.

11 & 12 VICT. CAP. 39.

An Act to facilitate the raising of Money by Corporate Bodies for building or repairing Prisons.

[14*th August*, 1848.]

5 & 6 Vict. c. 98.

WHEREAS, by an Act passed in the fifth and sixth years of her present Majesty, intituled *An Act to amend the Laws concerning Prisons*, the mayor, aldermen, and burgesses of boroughs in which there shall be a separate court of sessions of the peace are authorised and empowered by their councils to take up and borrow money for building or rebuilding, repairing or enlarging any prison, court house, or other necessary buildings to be used therewith, and to secure the repayment of such money as therein mentioned (1); And whereas it is expedient that greater facilities should be given to such councils for raising and from time to time repaying monies levied for the purposes aforesaid; And whereas "The Commissioners Clauses Act, 1847," contains certain clauses with respect to mortgages executed by the commissioners, and it would be attended with public advantage if such clauses were made applicable to mortgages and bonds executed by councils of boroughs under the powers of

(1) See 5 & 6 Vict. c. 98, s. 3, ante, p. 438, and the note thereto.

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the said Act relating to prisons: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the several clauses in the said "Commissioners Clauses Act, 1847," contained, with respect to mortgages executed by the commissioners, save as to such of the provisions thereof as are or may be inconsistent with the provisions of this Act, and save as hereinafter excepted, shall be incorporated with and form part of this Act, and shall be applicable to all mortgages or bonds which may at any time have been or shall be granted under the common seal of any borough by virtue of the provisions of the said recited Act "to amend the Laws concerning Prisons."

Clauses in 10 & 11 Vict. c. 16. respecting mortgages, extended to this Act.

II. And be it enacted, that everything which by "The Commissioners Clauses Act, 1847," is provided or required to be done, and all powers which may be exercised by the commissioners respecting any mortgages of rates or other property, shall and may be lawfully done by the council of any such borough as aforesaid, with respect to monies raised or to be raised under the provisions of the said recited Act "to amend the Laws respecting Prisons," and every thing which by the said "Commissioners Clauses Act, 1847," is provided or required to be done in relation to the borrowing or raising monies by the clerk to the commissioners shall and may be lawfully done by the town clerk of any such borough.

Matters to be done by the commissioners and their clerk may be done by council and town clerk.

III. And be it enacted, that the mortgagees or

Mortgagees may enforce

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payment of arrears by appointment of receivers.

bondholders of the corporation shall be empowered to enforce the payment of the arrears of interest or of the arrears of principal and interest due to them by the appointment of a receiver, in the same manner as is directed by the said "Commissioners Clauses Act, 1847."

10 & 11 Vict. c. 16, s. 84, as to sinking fund, not to apply to this Act.

IV. And be it enacted, that the eighty-fourth clause in the said "Commissioners Clauses Act, 1847," which provides for the repayment of monies borrowed on the security of rates by a sinking fund within a limited period, shall not apply to or be incorporated with this Act.

Money raised to pay off prior loans to be paid off within the original period of thirty years.

V. And be it enacted, that if the said council shall at any time borrow or take up at interest any sum of money at a lower rate of interest than any securities given by them and then in force shall bear, the money so borrowed at a lower rate of interest shall be paid off within the period of thirty years, to be calculated from the time when the money paid off was originally borrowed in the first instance.

Sinking fund to be provided.

VI. And be it enacted, that, in order to discharge the principal money borrowed, which the said council are by the provisions of the said recited Act "for amending the Laws concerning Prisons," required to pay off within the term of thirty years, the said council shall every year appropriate and set apart a sum equal to not less than six pounds and ten shillings per centum on the amount of every sum so borrowed by them respectively, and shall apply such sum from time to time, after payment thereout of the interest from time to time becoming due, as a

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sinking fund in paying off the respective principal monies so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of Exchequer bills or other Government securities, and to be increased by accumulation in the way of compound interest, or otherwise, until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof, which the said council shall think ought to be then paid off, at which time such accumulated monies or an adequate part thereof shall be so applied in paying off such principal debts in the manner mentioned in the said "Commissioners Clauses Act, 1847."

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INCORPORATION OF BOROUGHS CONFIRMATION ACT.

11 & 12 VICT. CAP. 93.

An Act to confirm the Incorporation of certain Boroughs. [31*st August*, 1848.]

WHEREAS charters of incorporation have been lately granted to the boroughs of Wolverhampton, Warrington, Wakefield, Ashton-under-Lyne, and Salford, to extend over certain districts mentioned in such charters respectively, and doubts have arisen respecting the validity of the said charters; And whereas it is expedient that such doubts should be removed: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said several charters of incorporation, and all elections, acts, or proceedings done or had in pursuance thereof, or by virtue of the same, before the passing of this Act, shall be deemed good and lawful from the time of such several grants, elections, acts, and proceedings respectively, and that the costs and expenses of such charters, elections, acts, and proceedings respectively shall and may be levied by a rate upon the occupiers of all buildings, lands, and hereditaments within the said several boroughs.

Certain proceedings in incorporated boroughs before passing of this Act, declared good and valid.

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II. And be it enacted, that the districts set forth in the said several charters as those intended to be comprised in such charters respectively, shall be deemed and taken to be the extent of such municipal boroughs respectively (9). Districts named in charters deemed extent of municipal boroughs.

OVERSEERS' APPOINTMENT (CITIES AND BOROUGHS) ACT.

12 & 13 VICT. CAP. 8.

An Act to remove Doubts as to the Appointment of Overseers in Cities and Boroughs.

[22*nd March*, 1849.]

WHEREAS doubts have been entertained (1) as to the proper authority for the appointment of overseers of the poor of the parishes comprised within certain cities and boroughs under the provisions of the Act of the forty-third year of the reign of Queen Elizabeth, intituled *An Act for the Relief of the Poor;* 43 Eliz. c. 2. and it is expedient that such doubts should be removed; Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and con-

(9) See also 5 & 6 Vict. c. 111, ante, p. 459; 13 & 14 Vict. c. 42, post.

(1) See *Reg.* v. *Preston*, 12 Q. B. 816, 3 New Sess. Ca. 313, in note (9) to 5 & 6 Will. 4, c. 76, s. 101, ante, p. 190.

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sent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in every city, town corporate, or borough, the justices of the peace having jurisdiction therein (2) shall have the exclusive right of appointing the overseers of the poor of the several parishes, townships, or other places separately maintaining their own poor, or of any parts thereof within the said cities, towns corporate, and boroughs respectively, in like manner and with the same effect as the justices of any county now have in respect of the overseers of the poor of any parish within such county, and they are hereby required from time to time to make such appointments accordingly.

Justices of the peace having jurisdiction in certain cities and boroughs to have the exclusive right of appointing overseers.

II. And be it enacted, that so much of the said Act as renders the mayor, aldermen, and head officer of any city, town, or place corporate liable, upon the default of the nomination of overseers therein, to lose and forfeit for every such default five pounds, shall be and the same is hereby repealed.

Repeal of part of 43 Eliz. c. 2, s. 10.

III. And be it enacted, that the appointments of any overseers of the poor in such cities, towns corporate, or boroughs heretofore made by justices of the peace therein, without the concurrence of the mayor or other head officer thereof, shall be deemed and taken to be valid, and that every rate or assessment made or to be made, and every other act and

Appointments of overseers in cities and boroughs by justices rendered valid.

(2) This includes county justices: see 15 & 16 Vict. c. 38. post.

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thing done or to be done by any overseers so appointed, shall, if otherwise lawful, be valid for all purposes.

Saving of the city of London and places under local Acts.

IV. Provided nevertheless, and be it enacted, that this Act shall not apply to the city of London, nor to any of the parishes comprised therein, nor to the appointment of the overseers of any parish, township, or place where such appointment is regulated by the provisions of any local Act (1).

PETTY SESSIONS ACT.

12 & 13 VICT. CAP. 18.

An Act for the holding of Petty Sessions of the Peace in Boroughs, and for providing Places for the holding of such Petty Sessions in Counties and Boroughs. [11*th May*, 1849.]

WHEREAS certain meetings of justices of the peace called petty sessions of the peace are holden in and for certain divisions of the several counties of England and Wales called petty sessional divisions, and important duties have lately been assigned to the justices attending at such petty sessions, and to their clerks, by certain Acts of Parlia-

(1) See also 12 & 13 Vict. c. 64, post, p. 501.

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ment(1), and it is desirable to declare and enact that the sittings of justices of the peace, or of a stipendiary magistrate, in and for every city, borough, or town corporate having a separate commission of the peace, or for any part thereof, shall be deemed a petty sessions of the peace within the meaning of such Acts, and that buildings or places at which such petty sessions may be holden shall, where necessary, be provided: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

Petty sessions of the peace in boroughs.

that every sitting and acting of justices of the peace, or of a stipendiary magistrate, in and for any city, borough, or town corporate having a separate commission of the peace, or any part thereof, within England and Wales, at any police court or other place appointed in that behalf, shall be deemed a petty sessions of the peace, and the district for which the same shall be holden shall be deemed a petty sessional division, within the meaning of any Acts of Parliament already made or hereafter to be made having relation to such petty sessions, or to any business to be transacted thereat.

Justices at general or quarter sessions, or the council in boroughs, may provide places for holding petty sessions.

II. And be it enacted, that in all cases where at present there are not, or where hereafter there shall not be, any fit or proper place for the holding of such petty sessions within any such petty sessional division as aforesaid, in any county, riding, liberty,

(1) See 11 & 12 Vict. cc. 42, 43.

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or division within England and Wales, or within any city, borough, or town corporate within the same, it shall be lawful for the justices of the peace for any such county, riding, liberty, or division, in general or quarter sessions assembled, and for the council or other governing body in any such city, borough, or town corporate having a separate commission of the peace respectively, if they shall respectively think fit, from time to time to direct that fit and proper places be hired or otherwise provided for the holding of such petty sessions of the peace within any such petty sessional division as aforesaid, and that the expenses thereof and attendant thereon be paid out of the county rate or borough fund respectively, as the case may be: Provided always, that no such direction for hiring or otherwise providing any place for the holding of such petty sessions shall be given by the justices for any such county, riding, liberty, or division, so assembled as aforesaid, unless an application in writing for that purpose, signed by the justices of the peace acting in such petty sessional division, or the major part of such justices, shall have been transmitted to the clerk of the peace six weeks at the least before the holding of the general or quarter sessions at which such direction shall be given; and the clerk of the peace shall cause notice of such application to be published in some newspaper circulating in the same county, riding, liberty, or division, and in which the advertisements of county business are usually inserted, fourteen days at the least before the holding of such general or quarter sessions: Provided always, that in every such case when it may

The justices or council may agree

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for the use of the county court for that purpose.

be so required to provide a fit and proper place for the holding of such petty sessions as aforesaid, if it shall appear to the justices so assembled as aforesaid, or to the council of such city, borough, or town corporate respectively, that the county court for the district is holden in any building or place which would be appropriate for the holding of such petty sessions, it shall be lawful for such justices or council respectively to contract with the treasurer of such county court for the use and occupation thereof, or so much thereof as may be needed for the purposes of such petty sessions, for such time or times, weekly or otherwise, and at such annual rent, and subject to such conditions as to repairs, alterations, or improvements of such building or place, as may be agreed upon.

[Sect. 3 relates only to the providing of places for sessions of the peace for *several counties*, &c.]

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POOR RELIEF (BOROUGHS) ACT.

12 & 13 VICT. CAP. 64.

An Act to remove Doubts as to the Authority of Justices of the Peace to act in certain Matters relating to the Poor in Cities and Boroughs.

[28*th July*, 1849.]

WHEREAS, by the Act of the forty-third year of the reign of Queen Elizabeth, intituled *An Act for the Relief of the Poor*, authority is given to justices of the peace for counties to act in certain matters relating to the poor, and doubts have been entertained (1) whether the same powers extend to justices of the peace having jurisdiction within cities and boroughs, and it is expedient that such doubts should be removed: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that notwithstanding anything in the said Act contained, all powers and authorities which by the said Act may be exercised out of general or quarter sessions by two or more justices of any county, may be exercised within any city or borough by any two or more

Justices of the peace in cities and boroughs may act in all matters relating to the relief of the poor under the 43 Eliz. in such cities and boroughs.

(1) See *Reg.* v. *Preston*, 12 Q. B. 816, 3 New Sess. Ca. 313, in note (9) to 5 & 6 Will. 4, c. 76, s. 101, ante, p. 190; and 12 & 13 Vict. c. 8, ante, p. 495.

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justices of the peace having jurisdiction within such city or borough respectively (2), as fully in all respects as by the justices of the county in or for any parish of such county.

Acts of the justices in any city or borough confirmed.

II. And be it enacted, that nothing heretofore done in any city or borough for the purposes of the said Act by any two or more justices having jurisdiction in such city or borough shall be deemed or taken to have been illegally or insufficiently done by reason only that neither of the said last-mentioned justices was mayor, bailiff, or head officer of such city or borough, but every thing so done by such two or more justices, if otherwise lawful, shall be deemed to be and to have been valid to all intents and purposes.

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(2) This includes county justices: see 15 & 16 Vict. c. 38, post.

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COUNTY RATES, &c. ACT.

12 & 13 VICT. CAP. 65.

An Act to provide a more convenient Mode of levying and collecting County Rates, County Police Rates, and District Police Rates, in Parishes situated partly within and partly without the Limits of Boroughs which are not liable to such Rates (1).

[28*th July*, 1849.]

WHEREAS there are several parishes and places in England and Wales, parts of which are comprised in boroughs not subject to contribute to the county rate, or county or district police rate, while the parts out of the borough are liable to contribute thereto; And whereas there are several parishes, parts of which are comprised in boroughs which are subject to district, borough, and other rates, while the parts out of the borough are not liable to contribute thereto: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that where any parish or place separately maintaining its own poor shall be divided in manner hereinbefore stated, and any county rate, or county or district police rate, or other rate which may by law be

The overseers of parishes situated partly within boroughs and partly with-

(1) See ante, 7 Will. 4 & 1 Vict. c. 78, s. 29, p. 356, and c. 81, s. 3, p. 382; also 8 & 9 Vict. c. 110, p. 476. So much of this Act as relates to *county rates* is repealed, but re-enacted in terms, by the 32nd and subsequent sections of the County Rates Act, 15 & 16 Vict. c. 81, post, Appendix.

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out, to collect the county rates, county police rates, and district police rates leviable on the part of the parish not comprised within the borough.

raised in like manner as a county rate, shall be assessable upon the part of the parish or place which is comprised within the county and excluded from the borough, the overseers of such parish or place shall, on receipt of any precept or other lawful demand from the justices of the county, or other due authority in that behalf, demanding the payment of any sum of money as the contribution of the part of such parish or place out of the borough towards any such rate as aforesaid, with all convenient speed assess the sum so required upon the persons liable within such part of the parish or place to pay the poor rate therein, by means of a separate rate, to be made, allowed, and published in like manner as the poor rate, and either by themselves or by the collector of poor rates for the time being appointed for the said parish or place shall collect the same separately or with the poor rate payable by the parties assessed thereto, and for the purposes of assessing and collecting the same shall have all such powers, authorities, privileges, protections, and incidents as belong to them in the assessing and collection of the poor rate; and all provisions of the law for enforcing the collection of the poor rate, and recovering the costs of the proceedings therein shall be applicable to the collection of the rate or rates herein provided for.

Similar provision for the collection of the borough rate in places similarly situated.

II. And be it enacted, that in every case in which any such parish or place shall be partly within and partly without any borough, the overseers or other persons charged with the collection of the rates made for the relief of the poor in such parish or place, upon the receipt of any warrant from the mayor or any justice

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or justices of the peace, high constable, or other officer duly authorised to act in that behalf within the borough, for the payment of money for the contribution of the part of such parish within such borough towards any district, borough, or other rate (which warrant every such mayor, justice of the peace, high constable, and other officer shall be severally empowered to direct to them, in like manner as if the whole of such parish or place were within their borough), shall assess upon and levy from the inhabitants and occupiers of all messuages, lands, tenements, and hereditaments liable to the poor rates, in that part of their parish or place which is within the borough, the amount mentioned in the warrant, either as a separate rate or rates, for which the said overseers shall have all the powers which belong to them for levying a rate for the relief of the poor, or with and as part of the poor rate to which the inhabitants and occupiers of property within that part of the parish or place may be liable in common with the inhabitants and occupiers of property within the other part thereof which is not within the borough, and out of the monies so levied and collected shall pay the amount mentioned in the warrant to the person duly authorised to receive the same, and in default thereof shall be subject to all the provisions and penalties provided by this Act, or any Act concerning the nonpayment of any borough rate (1).

Appeal against the rate and

III. And be it enacted, that any person assessed to any rate made under the authority of this Act may

(1) See 5 & 6 Will. 4, c. 76, s. 92, ante, p. 168; 8 & 9 Vict. c. 110, s. 7, ante, p. 481.

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audit of the accounts.

appeal against the same in like manner, and with the like consequences in all respects, and subject to the same provisions and regulations as in appeals against the poor rate (1); and that every overseer and collector shall account for the money levied, collected, and expended under the authority of this Act, to the auditor of the district comprising such parish or place, in like manner as for the poor rate, and, if any balance be found to be in his hands, shall apply the same towards the next rate required for the purpose of this Act, or shall pay the same to his successor in office; and in default of his so applying the same while in office, or making payment to his successor within seven days after the balance shall have been found, such auditor shall proceed to recover the same from the person holding the same, in like manner as sums certified by him to be due from persons accounting shall from time to time be recoverable; and he shall be paid his costs and expenses, when not recovered from the defendant, by the then overseers of the parish or place, who shall be reimbursed out of the balance of such rate, or, if need be, out of the next rate.

Mode of procuring the funds when the precept is sent to the guardians of the union comprising the divided place. 7 & 8 Vict. c. 33.

IV. And be it enacted, that where a precept shall be issued to the guardians of the union comprising any such parish or place under the provisions of the Act passed in the eighth year of the reign of her Majesty, intituled *An Act for facilitating the Collection of County Rates, and for relieving High Constables from Attendance at Quarter Sessions in certain Cases, and from certain other Duties*, and such

(1) As to which, see 43 Eliz. c. 2; 17 Geo. 3, c. 38; 6 & 7 Will. 4, c. 96, s. 6; 12 & 13 Vict. c. 45.

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precept shall contain a sum to be assessed and charged in respect of any such rate as is herein provided for upon a part of such parish or place as aforesaid, the said guardians may require the overseers of such parish or place to pay to their treasurer a sum of money sufficient to enable the said guardians to pay the sum so assessed, with the other sums mentioned in the said precept to the treasurer of the county or other person lawfully authorised to receive it; and the said overseers shall pay the amount out of any monies in their possession belonging to the parish or place or to the part of such parish or place respectively, and reimburse themselves, if necessary, by a rate, to be levied as hereinbefore described, upon the persons liable thereto, or, if they have no such monies, shall forthwith proceed to levy and collect the requisite amount by such rate, and pay the same over to the treasurer of the said guardians: Provided nevertheless, that if such overseers make default, and do not make the requisite payment within the appointed time, they shall be subject to be proceeded against in like manner as the overseers of a parish wholly situated within the county are subjected to under the provisions of the said Act.

Where the amount required for the county or other rate is small, the making of the rate for reimbursement may be postponed.

V. And be it enacted, that where the amount required in respect of any such county rate, police or district police rate, from any part of such parish or place as aforesaid, shall in the judgment of such overseers be so small as to render the levying and collecting of a separate rate for it inconvenient, the overseers may postpone the reimbursement of themselves for any such advance as aforesaid, and they

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or their successors may afterwards, on the recurrence of the next precept or other lawful demand, or of that next but one, levy and collect such a rate as aforesaid, to raise the whole amount so previously advanced and unsatisfied out of the poor rates of the parish, as well as the amount required by the then precept or demand, and shall apply the sum so collected in reimbursement of the previous payments, and the satisfaction of such precept or demand, and shall apply the balance, if any, towards the discharge of the next precept or demand.

Repeal of certain part of 1 Vict. c. 81.

VI. And be it enacted, that from the twenty-ninth day of September one thousand eight hundred and forty-nine, so much of the Act passed in the first year of her Majesty, intituled *An Act to provide for the levying of Rates in Boroughs and Towns having Municipal Corporations in England and Wales*, as applies to the making, levying, and collecting the county rate and borough rate in divided parishes or places, shall, except in respect of rates before that time made, levied, or collected, or of any arrears of rates in course of being collected, be repealed, and all balances which may remain over the sums required by the precepts under which the rate was levied shall be applicable towards the discharge of the next county rate or borough rate assessed upon such divided parish or place, and if not so applied by the party holding the same, shall be recoverable by the person entitled to receive the same, on complaint before two justices of the peace of the county having jurisdiction in that part of the parish or place, who shall make an order for the payment of the sum due, to be enforced in like manner, and

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with the like consequences, as orders of justices for the payment of money shall be then by law enforceable.

BOROUGHS' RELIEF FROM COUNTY RATE ACT.

12 & 13 VICT. CAP. 82.

An Act to relieve Boroughs, in certain Cases, from Contribution to certain Descriptions of County Expenditure. [1*st August*, 1849.]

WHEREAS by an Act passed in the session of Parliament held in the fifth and sixth years of the reign of his Majesty King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, it was enacted, that, within ten days after the grant of a separate court of quarter sessions of the peace to any borough, the council of such borough should send a copy of such grant, sealed with the seal of the borough, to the clerk of the peace of the county in which such borough or any part thereof was situated; and after the grant of such court to any borough it should not be lawful for the justices of the peace of any county wherein such borough or part of such borough was situate to assess any messuages, lands, tenements, or hereditaments within such borough to any county rate thereafter to be made, but every part of every such borough should thenceforward be

5 & 6 Will. 4, c. 76.

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wholly freed and discharged from contributing, otherwise than was thereinafter provided, to any rate or assessment of any kind of and for the county in which any part of such borough was situated; and it was thereby further enacted, that the treasurer of every county in England and Wales should keep an account of all sums of money received in aid or on account of the county rate, and of the sum of money expended out of the county rate for other purposes than the costs arising out of the prosecution, maintenance, and punishment, conveyance and transport, of offenders committed for trial in such county, and, in case of boroughs having a separate court of quarter sessions of the peace, other than out of coroners' inquests, and should not more than twice a year send a copy of such account to the council of every borough situate within such county in which a separate court of quarter sessions of the peace should be holden, and which before the passing of the Act intituled *An Act to settle and describe the Divisions of Counties, and the Limits of Cities and Boroughs, in England and Wales, so far as respects the Election of Members to serve in Parliament*, was chargeable with or liable to contribute in whole or in part to the county rate of such county, and should make an order on the council of every such borough for the payment of such proportion of such sum as would have been chargeable, after deducting all sums of money received in aid of the county rate as aforesaid, if the said Act had not passed, upon such borough as the same should be bounded according to the provisions of the said Act; and the council of such borough should forthwith order the same, with all reasonable charges of making and sending

2 & 3 Will. 4, c. 64.

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the said account, to be paid to the treasurer of such county out of the borough fund; And whereas by an Act passed in the session of Parliament held in the fifth and sixth years of the reign of her present Majesty, and intituled *An Act to amend the Laws concerning Prisons*, it is required that in every borough in which there is or shall be a body corporate of mayor, aldermen, and burgesses under the provisions of the said firstly hereinbefore recited Act, and to which a separate court of sessions of the peace hath been or shall be granted, there shall be one gaol and at least one house of correction (except only where such contracts as in the said Act mentioned have or shall have been entered into by the said mayor, aldermen, and burgesses, and shall be subsisting, for the maintenance of prisoners committed from such borough), and every such gaol and house of correction is to be provided and maintained by and at the cost of the same borough; And whereas it is just and expedient that every such borough having, or providing and maintaining, at its separate cost, such gaol and house of correction, should be exempted from paying or contributing to the costs also of providing or erecting and maintaining any new gaol for the county in which the same is situate, except only as is hereinafter excepted(1); And whereas it is also just and expedient that every such borough having, or providing and maintaining, either alone or jointly with other parties, any sufficient asylum or asylums for the reception and maintenance

5 & 6 Vict. c. 98.

(1) See 5 & 6 Will. 4, c. 76, ss. 112, 117, and the case of *Reg.* v. *Mayor &c. of Birmingham*, 10 Q. B. 116, in note(1) to s. 117, ante, p. 215.

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of its pauper lunatics according to the provisions of an Act passed in the session of Parliament held in the eighth and ninth years of her present Majesty, intituled *An Act to amend the Laws for the Provision and Regulation of Pauper Lunatic Asylums for Counties and Boroughs, and for the Maintenance and Care of Pauper Lunatics in England*, should be exempted from paying or contributing to the costs also of providing, erecting, or maintaining any pauper lunatic asylum for the county in which the same borough is situate, and of maintaining the pauper lunatics chargeable thereto: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act no borough to which a separate court of quarter sessions of the peace hath or shall have been granted under the provisions of the said firstly-recited Act, and which shall possess or provide, or shall have commenced and shall be *bonâ fide* proceeding with the construction of a sufficient gaol and house of correction to the satisfaction of one of Her Majesty's principal Secretaries of State for the custody and correction of persons committing offences within such borough, shall, under the provisions of the said first-recited Act or otherwise, be charged with or liable to pay or contribute any costs, charges, or expenses to be incurred by any county in which such borough shall be wholly or partly situate, in purchasing or providing a site for or erecting or completing or maintaining any new gaol or house of correction for such county, except only that in calculating the monies

8 & 9 Vict. c. 126.

Boroughs having or providing a gaol and house of correction not to be liable to contribute to a county gaol and house of correction, except in a certain manner.

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which any borough shall be liable to pay or contribute under the provisions of the said firstly-recited Act on account of any costs arising out of the prosecution, maintenance, and punishment, conveyance and transport, of any offenders committed for trial to the assizes in such county from the same borough, or, under the provisions of the said Act for the amendment of the laws concerning prisons, on account of the expenses incurred in the conveyance, transport, maintenance, safe custody, and care of any persons committed for offences arising within such borough, and sent to any prison of the county in which such borough is situate, it shall be lawful for the parties or party making such calculation to include therein such proportion of any monies which shall be paid by the county out of the county rate, or out of any monies received in aid of the county rate (monies borrowed by the county not being considered as monies received in aid of the county rate), on account of the purchase or the providing of a site for, or erection, completion, or maintenance of such gaol or house of correction, or on account of the principal or interest of any monies which shall have been borrowed by the county for such purposes, or any of them, as the number of borough prisoners which shall have been in custody in any gaol or house of correction belonging to the said county during the period for which such calculation shall be made shall bear to the whole number of prisoners during the same time confined in all the gaols and houses of correction belonging to the said county; provided that nothing in this Act contained shall extend to exempt any such borough from contributing its proportion of any expense heretofore in-

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curred, for any of the purposes aforesaid, by any county in which such borough shall be situate as aforesaid, but every such borough shall remain liable to and pay such proportion thereof as it would have been chargeable with in case this Act had not passed; provided also, that no such borough shall be entitled to or be allowed credit for any share or proportion of any monies to arise or be produced from the sale of any old or unnecessary gaol or house of correction belonging to such county, or of the site thereof, anything in the said firstly-recited Act or any other Act contained notwithstanding.

Boroughs having or providing a lunatic asylum not to be liable to contribute to county asylum.

II. And be it enacted, that from and after the passing of this Act no such borough as aforesaid which shall possess or provide, or shall have commenced and shall be *bonâ fide* proceeding with the construction of, a sufficient asylum to the satisfaction of one of Her Majesty's principal Secretaries of State for the reception or care of the pauper lunatics in such borough, in pursuance of the said Act for amending the laws for the provision and regulation of lunatic asylums for counties and boroughs, and for the maintenance and care of pauper lunatics in England, shall be liable to pay or contribute to the payment of any costs, charges, or expenses incident to the future or subsequent purchase, erection, fitting up, or maintenance of any new lunatic asylum by the county in which such borough is situate, or to the payment of any costs, charges, or expenses which may be incurred after such asylum shall be actually opened for the reception or care of the pauper lunatics in such borough, for maintaining any pauper lunatics chargeable to such county.

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Providing for cases where settlement of pauper lunatics is unknown.

III. Provided always, and be it enacted, that when any pauper lunatic shall, in pursuance of the provisions of the said in part recited Act of the eighth and ninth years of the reign of her present Majesty, be confined within a lunatic asylum belonging to any borough, or within any house duly licensed, or any hospital registered for the reception of lunatics within such borough, or shall be found wandering within the limits of such borough, and it cannot be ascertained in what parish such pauper lunatic is settled, it shall not be lawful for any justice to adjudge such pauper lunatic to be chargeable to the county in which such borough is situated, nor to make any order upon the treasurer of such county for the payment of any expenses whatsoever incurred or to be incurred in respect of the said lunatic; and all the clauses and provisions in the said last in part recited Act as to the mode of determining that a pauper lunatic is chargeable to a county, and as to the order to be made for the maintenance of such pauper lunatic, shall extend and be applied to such borough, as fully and effectually to all intents and purposes as if all the said clauses and provisions were repeated and re-enacted in this Act and made applicable to such borough, in the same manner in all respects as though for the purposes of this provision such borough were a separate and distinct county.

Interpretation of Act.

IV. And be it enacted, that, throughout this Act, where there shall be nothing in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and vice versâ; and the word "prison" shall include gaol and house of correction.

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As to extension of Act.

V. And be it enacted, that this Act shall extend only to England and Wales.

INCORPORATION OF BOROUGHS CONFIRMATION ACT.

13 & 14 VICT. CAP. 42.

An Act to confirm the Incorporation of certain Boroughs, and to provide for the Payment of the Expenses of the Incorporation of new Boroughs (1).

[29*th July*, 1850.]

WHEREAS charters of incorporation have been lately granted to the boroughs of Halifax, Oldham, and Tynemouth, to extend over certain districts mentioned in such charters respectively, and doubts have arisen respecting the validity of the said charters; And whereas it is expedient that such doubts should be removed: Be it therefore declared and enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said several charters of incorporation, and all elections, acts, or proceedings done or had in pursuance thereof, or by

Certain charters of incorporation and the proceedings

(1) See also 5 & 6 Vict. c. 111, ante, p. 459; 11 & 12 Vict. c. 93, ante, p. 494.

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virtue of the same, before the passing of this Act, shall be deemed good and lawful from the time of such several grants, elections, acts, and proceedings respectively, and that the costs and expenses of such charters, elections, acts, and proceedings respectively shall and may be paid out of any borough rate or borough rates levied or to be levied within the said several boroughs; and all payments which have been made out of any borough rate or borough rates for the said borough respectively in respect of such costs and expenses shall be deemed to have been good payments.

thereunder confirmed.

II. And be it enacted, that the districts set forth in the said several charters as those intended to be comprised in such charters respectively shall be deemed and taken to be the extent of such municipal boroughs respectively.

Districts set forth to be deemed the extent of municipal boroughs.

III. And be it enacted, that when any charter of incorporation shall hereafter be granted by her Majesty to any town or borough in England or Wales, in pursuance of the provisions of an Act made and passed in the session of Parliament held in the fifth and sixth years of the reign of King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, or of any Act or Acts which have been or may be passed to amend the same, it shall be lawful for the council of such town or borough to pay the costs and expenses of and in relation to such charter of incorporation, and of and in relation to all elections, acts, and proceedings under the same, out of any borough rate or borough rates to be made for such town or borough.

In case of future charters, the costs and expenses may be paid out of the borough rate. 5 & 6 W. 4, c. 76.

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BOROUGH BRIDGES ACT.

13 & 14 VICT. CAP. 64.

An Act to provide for more effectually maintaining, repairing, improving, and rebuilding Bridges in Cities and Boroughs. [14*th August*, 1850.]

WHEREAS it is expedient that all bridges in any city or borough, which such city or borough, and not the county in which such city or borough is situate, is legally bound to maintain and repair, should be under the sole management and control of the council of such city or borough; And whereas it is also expedient that such council of such city or borough should in certain cases be empowered to borrow on the security of the rate of such city or borough the money which may from time to time be required for the purpose of maintaining, altering, widening, repairing, improving, and rebuilding such bridges: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act every bridge which is either wholly or in part within the limits of any city or borough in which there is or shall be a body corporate, of mayor, aldermen, and burgesses, under the provisions of an Act passed in the sixth year of the reign

Providing for the repairs and rebuilding of bridges within limits of corporate cities or boroughs.

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of his late Majesty, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, or of any charter granted in pursuance of that or of any subsequent Act, and which bridge such city or borough, and not the county in which such city or borough is situate, is legally bound to maintain or repair, shall, as to the whole of such bridge, if the same is wholly within the limits of such city or borough, or as to such part as is within the limits of such city or borough, if part only is within such limits, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council of such city or borough. 5 & 6 W. 4, c. 76.

Councils may direct payment of necessary amount of money out of rates.

II. And be it enacted, that, for the purposes of this Act, such council of any such city or borough, at any meeting of such council, shall have and may exercise all the powers which the justices of the peace of any county at their general or quarter session of the peace, or at any other time, now have and may exercise with respect to any county bridge (1), or as near thereto as the nature of the case will admit; and that it shall and may be lawful for such council, and they are hereby empowered, to order and direct that such sum or sums of money as shall be necessary for the purposes aforesaid shall be paid, out of the rate of such city or borough, by the treasurer for the time being of such city or borough, at such times and in such manner as to the said council shall seem fit: Provided always,

(1) See the statutes relating to county bridges collected, 2 Chit. Stat., 543—558 (2nd edit.), tit. "Highways (Bridges)."

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that it shall not be necessary for the council of any such city or borough to cause any notice to be given or published in any newspaper in any case in which notice is required to be given or published with respect to county bridges.

Council may borrow money for the purpose of maintaining or rebuilding bridges.

III. And be it enacted, that, when and so often as it shall appear to the council of any such city or borough, at any meeting of such council holden at any time after the passing of this Act, that the amount of any estimate approved of by such council for the maintaining, altering, widening, repairing, improving, or rebuilding of any such bridge or bridges or any part thereof, or the approaches thereto, which any such city or borough, and not the county in which such city or borough is situate, is legally bound to maintain and repair, shall exceed the sum of one hundred and fifty pounds, it shall and may be lawful for such council and they are hereby empowered, after having first entered a statement of the amount of such estimate in the minute book of the council, to borrow and take up on mortgage of the rate of such city or borough, by an instrument in the form contained in the schedule to this Act annexed marked (A.), or to the like effect, any sum or sums of money not exceeding the amount of such estimate, in sums of not less than fifty pounds each, at interest, as to the said council shall appear necessary and expedient, for the purposes aforesaid or any of them, and to secure every such sum of money so borrowed upon the credit of the said rate; and it shall and may be lawful for such council, at any such meeting, and they are hereby authorised and empowered, to treat and agree with any person or persons for the loan of

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any such sum or sums of money; and every such instrument under the hand of the mayor or other member of the council who shall happen to preside at any such meeting as aforesaid, and under the corporate seal of the said city or borough, shall be and the same is hereby declared to be effectual for securing the money therein expressed to be advanced, with interest thereon, to the person or persons advancing the same, on such terms as in and by such instrument shall be stipulated; and a copy of every such instrument shall be kept by the town clerk of any such city or borough as aforesaid; and it shall and may be lawful for any person or persons who shall be entitled to the money thereby secured, and for his, her, or their executors or administrators, and such person or persons, and his, her, or their executors or administrators are hereby empowered, by indorsing his, her, or their name or name* on the back of any such instrument, and by giving notice of such indorsement to the town clerk for the time being, to transfer the same, and his, her, or their right to the principal money and interest thereby secured, unto any person or persons; and every such assignee or assignees, his, her, or their executors or administrators, may in like manner transfer the same again, and so toties quoties; and the person or persons to whom any such transfer thereof shall be made, and his, her, or their executors, administrators, or assigns, shall be a creditor or creditors upon the said rate in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced as aforesaid.

* sic.

IV. And be it enacted, that it shall and may be Interest on monies bor-

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rowed to be a charge upon the rates.

lawful for such council, and they are hereby authorised and required, to charge the rate to be raised in such city or borough, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall insure the payment of the whole of the sum borrowed within fourteen years from the time of borrowing the same, and such sums shall be assessed on such city or borough in such manner as borough rates are directed to be assessed under the laws in force for that purpose, and shall be paid and applied, under the direction of such council, in discharge of the interest, and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the council shall and they are hereby required to fix one or more day or days in each year on which such payment shall be made, and shall give directions for assessments to be made in due time, so as to provide for the regular payment thereof; and the treasurer of such city or borough shall and he is hereby required to keep an exact and regular account of all the receipts and payments under the authority of this Act, in a book or books, separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due and what principal money has been discharged, and what remains due, and the books or book so adjusted and settled to lay before the council at every quarterly meeting of such council; and such council shall also and they are hereby required, at every such quarterly meeting, carefully

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to inspect all such accounts, and to give such orders and directions for carrying the purposes of this Act into execution, in such manner as to them shall seem meet; and such council at such quarterly meeting as aforesaid shall direct in what order such securities shall be discharged, by drawing lots or otherwise, as they shall think fit: Provided always, that they shall in the first place discharge all such securities as shall bear the highest rate of interest.

Repair of bridges included within boundaries of municipal boroughs. 5 & 6 Will. 4, c. 76.

V. And whereas by the extension of the boundaries of certain boroughs under the provision of the Act of the fifth and sixth year of King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, certain bridges and parts of bridges have been included within the boundaries of those cities and boroughs, and are thereby subject to the jurisdiction of such cities or boroughs, which bridges before the passing of such Act were maintained as to the whole or such parts thereof as were within the limits of such cities and boroughs by the inhabitants thereof, and the remaining bridges and parts of bridges which were not situate within such limits were maintained by the inhabitants of the counties or ridings respectively adjoining thereto; And whereas doubts have arisen respecting the future repairs and maintenance of such bridges: Be it therefore enacted, That every bridge which is wholly or in part included within the boundary of any such city or borough the inhabitants whereof, before the passing of the said recited Act, were by prescription or otherwise liable to and did maintain the bridges

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and parts of bridges within their respective cities and boroughs, shall as to the whole of such bridges, if the same is wholly within the limits of such city or borough, or as to such part as is within the limits of such city or borough if part only is within such limits, be maintained, altered, widened, and repaired, improved or rebuilt, under the sole management and control of the council of such city or borough.

THE SCHEDULE TO WHICH THIS ACT REFERS.

(A.)

Form of Mortgage and Charge upon the Borough Rate for securing Money borrowed.

I *A. B.* [mayor, alderman, *or* councillor, *as the case may be*], of the [city *or* borough of ——], and chairman of a certain meeting of the council of the said [city *or* borough of ——, *as the case may be*] duly holden at —— aforesaid on the —— day of —— in the year of our Lord —— in pursuance of the powers to me given by an Act passed in the —— year of the reign of her Majesty Queen Victoria, intituled [*insert title of Act*], do hereby mortgage and charge all the rates to be raised within the said [city *or* borough] under the description of borough rates by the laws now in being with the payment of the sum of —— pounds, which *C. D.* of —— hath proposed and agreed to lend, and hath now actually advanced and paid, towards defraying the expenses of [maintaining, altering, widening, repairing, improving, *or* rebuilding, *as the case may be*] a certain bridge called —— [*or* certain bridges called —— and ——] within the said [city *or* borough], and the approaches thereto [*as the case may be*]; and I do hereby assign the same unto the said *C. D.*, his executors, administrators, and assigns, for securing the payment of the sum of —— pounds, and interest for the same after the rate of —— pounds per centum per annum, and do order the treasurer for the said [city *or* borough] to pay the interest of the said sum of —— after the rate aforesaid, half-yearly, as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said Act.

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THE PUBLIC LIBRARIES ACT, 1850.

13 & 14 VICT. CAP. 65.

An Act for enabling Town Councils to establish Public Libraries and Museums.

[14*th August*, 1850.]

WHEREAS it is expedient to promote the establishment and extension of public libraries, and to give greater facilities than now exist for establishing and extending public museums of art and science, in municipal boroughs, for the instruction and recreation of the people; Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That an Act passed in a session of Parliament held in the eighth and ninth years of the reign of her present Majesty, intituled *An Act for encouraging the Establishment of Museums in large Towns*, shall from and after the passing of this Act be repealed; and that it shall be lawful for the mayor, upon the request of the town council of any municipal borough (the population of which, according to the last account taken thereof by authority of Parliament, exceeds ten thousand persons), to ascertain whether the provisions of this Act shall be adopted for such borough, in manner following; that is to say, by causing a notice to be

8 & 9 Vict. c. 43, repealed, and this Act may be adopted in any municipal borough.

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affixed on or near the door of the town hall of the said borough, and on or near the door of every church or chapel within the said borough, and to be inserted in some newspaper published in such borough, or, if there be none such, in some newspaper published in the county in which such borough is situate, and circulating in such borough, specifying on what day, not earlier than ten days after the affixing and publication of such notices, and at what place or places within the said borough, the burgesses are required to signify their votes for or against the adoption of this Act; which votes shall be received on such day, commencing at nine of the clock in the forenoon and ending at four of the clock in the afternoon of such day; and the said notice shall be to the effect of form No. 1, in the schedule hereto annexed.

Mayor to appoint places for taking the votes.

II. And be it enacted, that the mayor shall appoint places and persons for taking the said votes, and they shall be there taken by such persons, and such questions may be put to each voter, and with such liability in case of a false answer, as at elections under the Act to provide for the regulation of municipal corporations in England and Wales; and the declaration of vote of the voters shall be to the effect of form No. 2, in the said schedule.

Burgesses on burgess roll entitled to vote.

III. And be it enacted, that every burgess who shall be enrolled on the burgess roll for the time being of such borough shall be entitled to vote for or against the adoption of this Act, and no person who shall not be enrolled on such burgess roll for the time being shall be entitled so to vote; and the mayor, in the presence of two or more members of

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the town council of such borough, shall examine the votes, and shall, by public notice in manner hereinafter mentioned, declare whether two-thirds of the votes given have been given in favour of the adoption of the said Act; and the adoption or non-adoption of this Act shall be decided by such number of votes as aforesaid; and notice of the adoption of this Act by the borough shall be forthwith given by affixing the same at or near the door of the town hall of the said borough, to the effect of form No. 3 in the said schedule; and if it shall be determined in manner aforesaid that the provisions of this Act shall be adopted for such borough, then it shall be lawful for the town council to purchase or take on rent, with or without payment of fine, any lands or buildings for the purpose of forming public libraries or museums of art and science, or both, and to erect, alter, and extend any buildings for such purpose, and to maintain and keep the same in good repair; and that for the purchase, building, extending, altering, and repairing such lands and buildings, and payment of such rent and fines, and for other purposes of this Act, and for the payment of any principal money and interest borrowed under the authority of this Act, it shall be lawful for the council to levy, with and as part of the borough rate, or by a separate rate to be levied in like manner as the borough rate, such sums of money as shall be from time to time needed: Provided always, that the whole amount of rate levied for the purposes of this Act do not in any one year amount to more than one halfpenny in the pound on the annual value of the property in the borough rateable to the borough rate.

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Town councils to provide the things necessary for the enjoyment of such museums and libraries, and to appoint proper officers.

IV. And be it enacted, that out of the monies to be raised under the provisions of this Act it shall be lawful for the town council, or for such committees as they shall appoint for all or any such purposes, from time to time to purchase and provide such fuel, lighting, fixtures, furniture, and other similar matters, for the convenient and useful occupation and enjoyment of such libraries, museums, and premises, and to appoint such officers and servants, with salaries and remuneration, and to make such rules and regulations for the safety and use of the said libraries and museums, and for the admission of visitors and others, as to them shall seem fit; and that any such committee may be appointed for such times only and composed of such persons (whether members of the council or not) as the council may think fit, and may at any time be dissolved by the said council.

Council, with approbation of Treasury, may borrow money on credit of borough rates, &c.

V. And be it enacted, that, for the purchase of such lands, and the erecting, extending, altering, and repairing of such buildings, it shall be lawful for the council of any such municipal borough as aforesaid, from time to time, with the approval of the Commissioners of her Majesty's Treasury, to borrow at interest such sums of money as may be required for the same, on the security of the said yearly amount of borough rate authorised by this Act.

Buildings for museums and libraries, and the property therein, to be held by the council of the borough in

VI. And be it enacted, that the lands and buildings so purchased, erected, extended, or altered as aforesaid, and also all books, maps, and specimens of art and science which may be presented to, and all fixtures, furniture, and articles of every description

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which may be presented to or purchased for, any such library or museum, or to or for the said council for the purposes of such library or museum, or to or for any committee appointed by them, shall be vested in and held upon trust for ever by the mayor, aldermen, and burgesses of the borough in which such library or museum shall be situated, and shall be managed by the council of the borough (or by a committee or committees appointed by them), and kept in fit and proper order, for the benefit of the inhabitants of the borough and others resorting thereto. Trust for the benefit of the inhabitants.

VII. And be it enacted, that admission to such libraries and museums shall be free of all charge. Admission to museums, &c. to be free.

VIII. And be it enacted, that if the burgesses shall determine in the manner aforesaid against the adoption of this Act it shall not be lawful, within two years after such determination, again to take the votes of the burgesses of the said borough in manner aforesaid for the purpose of ascertaining whether the provisions of this Act shall be adopted for such borough. If burgesses determine not to adopt this Act, it shall not be again proposed for two years.

IX. And be it enacted, that, notwithstanding the repeal of the said Act hereby repealed, all museums established or begun under the provisions of the said repealed Act may be lawfully maintained, completed, and managed by the ways and means in this Act provided, in all respects as if such museums had been established and begun under the sanction and provisions of this Act. Museums begun or established under repealed Act to be maintained, &c.

X. And be it enacted, that in citing this Act in Short title of Act.

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other Acts of Parliament and in legal instruments it shall be sufficient to use the expression "Public Libraries Act, 1850."

SCHEDULE.

No. 1.

In pursuance of the provisions of an Act of —— Victoria, chapter —— for enabling town councils to establish public libraries and museums, the burgesses of this borough are hereby required, on the —— day of —— to signify by a declaration, either printed or written, or partly printed and partly written, and to be delivered to the mayor or his deputy at the places under mentioned, their votes for or against the adoption of the aforesaid Act.

(Signed) *A. B.*, Mayor.

N. B.—The situation, division, and allotments of the different places for delivering the said votes are as follows: [*Here insert the place or places at which the burgesses are to vote, in like manner as in elections under the Act to provide for the regulation of municipal corporations in England and Wales.*]

No. 2.

I do hereby vote [for *or* against, *as the case may be*,] the adoption of the Act of the —— year of the reign of Queen Victoria, chapter ——, for enabling town councils to establish public libraries and museums. (Signed) *A. B.*

[*Here insert the name of the street, lane, or other place in which the property for which the voter appears to be rated on the burgess roll is situated.*]

No. 3.

Notice is hereby given, that this borough has adopted the provisions of an Act of the —— Victoria, chapter ——, for enabling town councils to establish public libraries and museums, and that the numbers of the majority and minority of votes given for or against the adoption of the said Act are as follow: that is to say, —— votes for the adoption of the said Act, and —— votes against it.

Dated this —— day of —— A. D. ——

(Signed) *A. B.*, Mayor.

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BOROUGH GAOLS ACT.

13 & 14 VICT. CAP. 91.

An Act to authorise Justices of any Borough having a separate Gaol to commit Assize Prisoners to such Gaol, and to extend the Jurisdiction of Borough Justices to all Offences and Matters arising within the Borough for which they act.

[14*th August*, 1850.]

WHEREAS great inconvenience and expense have been found to result to cities and boroughs having or providing and maintaining at their own cost gaols or houses of correction, from the necessity of committing to the common gaol of the county in which such city or borough may be situated for trial at the assizes holden for such county persons charged with offences committed within the limits of such city or borough, and it is expedient that the law should be altered and amended; And whereas it is also expedient that justices of the peace acting for any city or borough should have the same powers and authorities in all respects with regard to offences committed and matters arising within the limits of such city or borough as justices of the peace for the county within which such city or borough is situated now have with regard to such offences or matters under or by virtue of any local or general Act of Parliament: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the

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Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act it shall be lawful for any justice of the peace acting for any city or borough now having or providing and maintaining at its own cost, or which shall hereafter have or provide and maintain at its own cost, a gaol or house of correction, to commit for safe custody to such gaol or house of correction, for trial at the assizes to be holden for the county in which such city or borough may be situated, any person charged before him with any offence, except murder, committed within the limits of such city or borough triable at such assizes, and the commitment shall specify that such person is committed under the authority of this Act, and whenever any such person shall be committed to any such gaol or house of correction for trial at such assizes the keeper of such gaol or house of correction shall deliver to the judges of assize a calendar of all prisoners in his custody for trial at such assizes, in the same way that the sheriff of the county would be by law required to do if such prisoners had been committed to the common gaol of the county in which such city or borough may be situated; and the justice or justices by whom any person charged as aforesaid shall be committed shall deliver or cause to be delivered to the proper officer of the court the several recognizances, informations, depositions, and statements relative to such person at the time and in the manner that would be required in case such person had been committed to such county gaol.

Prisoners may be committed to borough gaols for trial at the assizes.

II. Provided always, and be it enacted, that no-

Nothing to authorise

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thing herein contained shall be construed to give any justice of the peace acting for any city or borough power to commit persons charged with murder to the gaol or house of correction of any city or borough for trial at the assizes to be holden for the county in which such city or borough may be situated, but such justices shall and they are hereby authorised and required to commit all such persons to the common gaol of such county for trial in such and the same manner as if this Act had not passed: Provided also, that the expenses properly incurred by such county in the maintenance, safe custody, and care of such last-mentioned prisoners so committed whilst in custody in such county gaol shall be borne and paid by such city or borough in the manner hereinafter provided with respect to prisoners removed to the county gaol for trial at the assizes.

Justices to commit persons charged with murder to any other than the county gaol.

As to expenses incurred in maintenance of last mentioned prisoners.

III. And be it enacted, that all persons who may under the authority of this Act be committed to the gaol or house of correction of any city or borough for trial at the assizes to be holden for the county in which such city or borough may be situated shall in due time be removed by the gaoler or keeper of such gaol or house of correction, with their commitments and detainers, to the common gaol of the county, in order that they may be tried at the assizes to be holden for such county, and such removal shall not be deemed or taken to be an escape.

Prisoners committed to borough gaols to be removed to county gaol previous to trial.

IV. And be it enacted, that every prisoner so removed shall for and during the time of such removal, and also for and during such time as he shall be detained in the county gaol, be to all intents and

Prisoners whilst under removal to be deemed to be in proper legal custody.

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purposes deemed and considered to be in the proper legal custody, notwithstanding he may in effecting such removal have been taken out of the jurisdiction of the city or borough to the gaol or house of correction of which he may have been originally committed into any other jurisdiction, or out of the county in which such gaol or house of correction may be situated into or through any other county or division of a county; and no action or other proceeding shall or may be maintained by such prisoner or by any other person against the gaoler or keeper of the gaol or house of correction of any city or borough, or against the gaoler or keeper of the common gaol of the county, by reason or in consequence of such prisoner having been taken out of the jurisdiction of such city or borough into any other jurisdiction, or out of the county in which such city or borough may be situated into or through any other county or division of a county.

Expenses of prisoners removed to county gaols to be calculated as provided by 5 & 6 Vict. c. 98.

V. And be it enacted, that the expenses which shall be incurred by such county in the maintenance, safe custody, and care of every prisoner so removed whilst in custody in such county gaol, shall be calculated upon the same principle and in the same manner as provided by an Act passed in the sixth year of the reign of her present Majesty, intituled *An Act to amend the Laws concerning Prisons*, with respect to borough prisoners committed to a county prison where no special contract is subsisting between such borough and county relative to such prisoners; and such expenses, and all other expenses which may be incurred by such county in respect of every such prisoner, shall be paid by the council of

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such city or borough to the treasurer of such gaol or county; and the amount of all such expenses shall, in case of dispute, be settled by a barrister at law in the manner provided by the said Act.

Account of expenses to be made out and signed by clerk to justices, and sent to town clerk of borough.

VI. And be it enacted, that an account in writing of the expenses due and payable, or claimed to be due and payable, in respect of the maintenance, safe custody, and care of such prisoners as aforesaid, shall be made out from time to time, and signed by the clerk to the visiting justices of the county gaol to which such prisoners shall have been committed, and delivered to the town clerk of the city or borough within which the offences shall have been committed; and such account shall be conclusive against such city or borough, unless some objection shall be made in writing, and signed by the town clerk of such city or borough, and delivered to the clerk of the said visiting justices, within one calendar month next after such account shall have been delivered to such town clerk.

In cases of conviction for offences committed within limits of any city, &c., Court may commit offender to borough gaol.

VII. And be it enacted, that whenever any person shall be convicted at any assizes of any offence committed within the limits of any city or borough having or providing and maintaining at its own cost a gaol or house of correction, for which offence such person shall be liable either to the punishment of transportation or imprisonment, it shall be lawful for the Court, if it shall so think fit, to commit such person to such gaol or house of correction, in execution of his judgment; and in case of the commitment of any person either sentenced to transportation or pardoned for any capital offence on condition

In case of commitment of persons.

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of transportation, all the powers, provisions, and authorities for the removal of offenders sentenced to transportation given or granted by any former Act or Acts of Parliament to sheriffs or gaolers shall be and the same are hereby extended and given to the gaoler or keeper of the gaol or house of correction in whose custody such offender shall be.

Provisions as to removal before trial to apply to removal after conviction.

VIII. And be it enacted, that all the provisions hereinbefore contained with reference to the removal of prisoners from any city or borough gaol to the county gaol for trial at the assizes shall be applicable and shall be applied to the removal from the county gaol to any city or borough gaol of any prisoner who, having been convicted at the assizes, shall be committed by the Court to such gaol or house of correction, in execution of his judgment.

Borough justices to have the same jurisdiction as county justices under any local Act as to offences committed within the borough(1).

IX. And be it enacted, that after the passing of this Act the justices of every city or borough shall have the same jurisdiction with respect to all offences committed and matters arising within such city or borough as the justices of the county in which such city or borough is situate now have under or by virtue of any local or general Act of Parliament; and such offences and matters shall be cognizable by one or more of the justices of such city or borough in the same manner as such offences and matters are now cognizable by one or more of the justices of such county: Provided always, that in every case in which imprisonment

(1) See ante, p. 294, n. (3); and 7 W. 4 & 1 Vict. c. 78, s. 30; and note (2) thereon, ante, p. 858.

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may be awarded for or in respect of any such offences or matters aforesaid, or to enforce payment of any penalty, rate, sum of money, or costs imposed or made payable by or by virtue of any such general or local Act or otherwise, such imprisonment may be awarded to take place in any gaol or house of correction to which the justices of the said city or borough now have or hereafter may have power to commit offenders.

Interpretation of terms.

X. And be it enacted, that, throughout this Act, where there shall be nothing in the subject or context repugnant to such construction, words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number, and words importing the masculine gender only shall include females.

Extent of Act.

XI. And be it enacted, that this Act shall extend only to England and Wales.

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MUNICIPAL CORPORATION ACTS AMENDMENT ACT.

15 & 16 VICT. CAP. 5.

An Act further to explain and amend the Acts for the Regulation of Municipal Corporations in England and Wales, and in Ireland.

[20*th April*, 1852.]

WHEREAS, by an Act passed in the session of Parliament holden in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, it is (among other things) enacted, that no person shall be qualified to be elected or to be a councillor or an alderman of any borough during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council of such borough; And whereas by another Act passed in the session of Parliament holden in the third and fourth years of the reign of her present Majesty, intituled *An Act for the Regulation of Municipal Corporations in Ireland*, it is (among other things) enacted, that no person shall be qualified to be elected or to be a councillor, or an alderman, or a municipal commissioner of any borough, during such time as he shall have, directly or indirectly, by himself or

5 & 6 W. 4, c. 76. (Sect. 28, ante, p. 47,)

3 & 4 Vict. c. 108.

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his partner, any share or interest in any contract or employment with, by, or on behalf of any such council, commissioners, or charitable trustees of such borough; And whereas doubts have arisen whether the said enactments may not be deemed to extend to the persons hereinafter mentioned, and it is expedient that such doubts should be removed: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

Proprietors of newspapers not to be deemed contractors by reason of advertisements.

I. That, from and after the passing of this Act, no person shall be deemed to have had or to have an interest in a contract or employment with, by, or on behalf of such council, commissioners, or trustees, by reason only of his having had or having a share or interest in any newspaper in which any advertisement relating to the affairs of any such borough, council, commissioners, or trustees may have been or may hereafter be inserted.

Suits commenced for certain penalties under recited Acts may be stayed on payment of costs out of pocket.

II. That immediately from and after the passing of this Act it shall be lawful for any person or persons against whom any original writ, suit, action, plaint, or information shall have been sued out, commenced, or prosecuted on or before the day of the passing of this Act, for the recovery of any pecuniary penalty or penalties incurred under the said enactments, (by reason only of any extension of the words "contract" or "employment," therein contained, to the case of any such insertion of advertisements in any newspaper as aforesaid,) to apply

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to the Court in which such original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, or to any Judge of one of the superior Courts at Westminster or Dublin, as the case may be, for an order that such writ, suit, action, bill, plaint, or information shall be discontinued, upon payment of the costs thereof out of pocket incurred to the time of such application being made, such costs to be taxed according to the practice of such Court; and every such Court or Judge is hereby authorised and required, upon such application, and proof that sufficient notice has been given to the plaintiff or plaintiffs, or to his or their attorney, of the application, to make such order as aforesaid, and upon the making such order, and payment or tender of such costs as aforesaid, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

Suits, &c. renewed or continued may be discontinued on payment of costs out of pocket.

III. Provided always, that in all cases in which any such writ, suit, action, bill, plaint, or information sued out or commenced on or before the fifth day of February, one thousand eight hundred and fifty-two, shall have been renewed or continued before the passing of this Act, or upon which any declaration shall have been filed or delivered, or other proceedings had, after the said fifth day of February, and before the passing of this Act, it shall be lawful for such Court or Judge, upon such application and proof as aforesaid, to make such order as aforesaid for discontinuing the same, upon payment of the costs out of pocket of all proceedings had on or before the said fifth day of February, to be taxed as aforesaid, and such costs out of pocket (if any) of

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any proceedings had after the said fifth day of February, as the Court or Judge making such order shall think fit to direct, and upon making such order, and upon payment or tender of such costs, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

Court may make order for discontinuing suit, without payment of costs.

IV. Provided also, that in all cases in which any such writ, suit, action, bill, plaint, or information shall have been sued out or commenced at any time subsequent to the said fifth day of February, it shall be competent for such Court or Judge as aforesaid to make such orders as aforesaid for discontinuing the same, without payment of any costs; and upon making such order such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

Judgments not to be affected.

V. That nothing herein contained shall extend to any action, bill, plaint, or information, or any legal proceeding of any kind whatsoever, in which any judgment shall have passed on or before the day of the passing of this Act, but such proceedings may be thereupon had and taken, and any such judgment may be dealt with in all respects as if this Act had not passed.

Proprietors of newspapers not disqualified from election to municipal offices by reason of advertisements, &c.

VI. That from and after the passing of this Act no municipal commissioner, councillor, alderman, or mayor in any municipal corporation within the provisions of either of the said Acts, shall be deemed to have been or to be disqualified to be elected or to be such municipal commissioner, councillor, alderman, or mayor, by reason only of his having had or having any share or interest in any newspaper in

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which any such advertisement as aforesaid may have been or may be inserted, but all elections of municipal commissioners, councillors, aldermen, or mayors as aforesaid shall be deemed and taken to have been and to be valid (unless in cases where judgment may have been obtained before the passing of this Act) notwithstanding any such share or interest as aforesaid.

APPOINTMENT OF OVERSEERS (CITIES AND BOROUGHS) ACT.

15 & 16 VICT. CAP. 38.

An Act to explain Two Acts of the Twelfth and Thirteenth Years of the Reign of Her Majesty, concerning the Appointments of Overseers, and the Authority of Justices of the Peace to act in certain Matters relating to the Poor in Cities and Boroughs. [30*th June*, 1852.]

WHEREAS by the Act passed in the twelfth year of the reign of her Majesty, chapter eight, it was enacted, that in every city, town corporate, or borough, the justices of the peace having jurisdiction therein should have the exclusive right of appointing the overseers of the poor of the several parishes, townships, or other places separately maintaining their own poor, or of any parts thereof within the said cities, towns corporate, and bo-

12 Vict. c. 8.

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roughs respectively, in like manner and with the same effect as the justices of any county then had in respect of the overseers of the poor of any parish within such county; And whereas, by another Act of the thirteenth year of the reign of her Majesty, chapter sixty-four, it was enacted, that all powers and authorities which by the Act of the forty-third year of the reign of Queen Elizabeth, intituled *An Act for the Relief of the Poor*, may be exercised out of general or quarter sessions by two or more justices of any county, might be exercised within any city or borough by any two or more justices of the peace having jurisdiction within such city or borough respectively as fully in all respects as by the justices of the county in or for any parish of such county; And whereas (1) doubts exist as to the meaning of the said statutes with reference to the justices who are competent to act under and by virtue of the same, and it is expedient that such doubts should be removed: Be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in any city or borough all justices of the peace, whether of such city or borough or of the county, riding, or division comprising the same or adjoining thereto, who shall otherwise have jurisdiction to act in any matter arising within such city or borough, shall be deemed to be competent to act therein under and by virtue of the said statutes in all respects.

13 Vict. c. 64.

Justices having jurisdiction in other matters in any city or place may act in cases relating to the relief of the poor.

(1) See ante, pp. 495, 501.

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THE MUNICIPAL CORPORATION ACT, 1853.

16 & 17 VICT. CAP. 79.

An Act for making sundry Provisions with respect to Municipal Corporations in England.

[*15th August*, 1853.]

WHEREAS the following Acts, to wit, the Acts of the sixth and seventh years of King William the Fourth, Chapters One hundred and four and One hundred and five, of the seventh year of King William the Fourth and the first year of Queen Victoria, Chapter Seventy-eight, of the second and third years of Queen Victoria, Chapter Twenty-eight, of the third and fourth years of Queen Victoria, Chapter Twenty-eight, of the fourth and fifth years of Queen Victoria, Chapter Forty-eight, and of the sixth and seventh years of Queen Vietoria, Chapter Eighty-nine, or some of the provisions thereof respectively, which might properly be made applicable as well to all the municipal corporations in England which have been erected since the passing of the Act of the sixth year of William the Fourth for regulating municipal corporations in England as to the municipal corporations specified in the schedules to that Act, do not apply to such recently erected municipal corporations by reason of those Acts or provisions being restricted in terms to the municipal corporations specified in those schedules; And

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whereas it is expedient that all Acts relating generally to the municipal corporations in England specified in those schedules should apply as well to all municipal corporations in England erected after the passing of that Act, and that further provision be made with respect to municipal corporations in England: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited for any purpose as "The Municipal Corporation Act, 1853."

Acts applying to corporations specified in schedule of 6 & 7 W. 4, c. 76, to extend to corporations erected after passing of that Act.

II. In every case in which an existing or future Act, passed after the Act of the sixth year of William the Fourth, Chapter Seventy-six, for the regulation of municipal corporations, or any provision of any such Act, applies generally to the municipal corporations specified in the schedules to that Act, or applies generally to municipal corporations in England, every such Act and every such provision shall (except only so far as by any Act hereafter passed is otherwise expressly provided) extend and apply, not only to every municipal corporation in England specified in those schedules, but also to every municipal corporation in England erected after the passing of that Act of the sixth year of William the Fourth, and whether erected by charter under that Act or otherwise.

For the validity of matters to which

III. Every matter to which any municipal corporation erected after the passing of that Act of

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newly erected corporations are party or privy.

the sixth year of William the Fourth has at any time heretofore been or now is party or privy, and which would have been or would now be valid, if any Act, or any provision of any Act passed after that Act, applying generally to the municipal corporations specified in the schedules to that Act, or applying generally to municipal corporations in England, but not applying expressly to the municipal corporations then or thereafter so erected, had applied expressly to all municipal corporations then and thereafter so erected, shall to all intents and purposes, both in favour of and against such municipal corporations so erected, be as valid as if every such Act and every such provision had applied expressly to every such municipal corporation then or thereafter so erected.

Act not to affect actions commenced before 18th March, 1853.

IV. Provided always, that this Act or anything therein contained shall not affect any action, suit, or other proceeding at law commenced at any time before the eighteenth day of March one thousand eight hundred and fifty-three.

Boroughs appointing inspectors of weights and measures not to be liable to contribute to county rate in respect of weights and measures in counties.

V. Every city, borough, and town corporate in which an inspector or inspectors of weights and measures is or are now or hereafter lawfully appointed by the recorder, justices, or others having jurisdiction in this behalf (1), shall be exempt from contributing to the expense of providing or transmitting for the use of the county, riding, division,

(1) See *Reg.* v. *Recorder of Hull*, 8 A. & E. 639, ante, p. 196, n. (1).

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or parts within which such borough or town corporate is situate, copies of the imperial standard weights and measures, or of the stamps to be used by the inspectors, or to the remuneration to the inspectors of weights and measures appointed for such county, riding, division, or parts; and the treasurer of every such county, riding, division, or parts shall, out of the account required by that Act of the sixth year of William the Fourth to be kept by him of all sums of money expended out of the county rate for other purposes than such costs as therein mentioned, exclude such expense and remuneration as aforesaid, in like manner as if the same had been by that Act excepted out of such account; and the amount to be paid to the treasurer of such county, riding, division, or parts by such borough or town corporate shall be varied accordingly.

Town councillors no longer exempted or disqualified from serving on grand juries in certain boroughs.

VI. So much of that Act of the sixth year of William the Fourth (1) as exempts or disqualifies members of the council for the time being of every borough in and for which a separate court of quarter sessions of the peace is holden, from serving on the grand jury at the quarter sessions held in and for such borough, is hereby repealed, so far as respects every borough which shall not contain twelve thousand inhabitants according to the last census.

Power to mayors to appoint deputies in certain cases.

VII. The mayor of every city, borough, and town corporate may from time to time appoint an alderman or councillor of such city, borough, or

(1) Sect. 122, ante, p. 223.

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town corporate to act as the deputy mayor during the illness or absence of the mayor, and every such appointment shall be signified in writing to the council, and shall be recorded in the minutes of their proceedings.

Power of deputy appointed by a mayor.

VIII. Every deputy appointed by a mayor under the provisions of this Act may, during the illness or absence of the mayor, lawfully do and perform all acts which the mayor in his official capacity might himself do and perform: Provided always, that no such deputy not being a justice of the peace shall act as a justice of the peace or in any judicial capacity, nor shall he preside at any meeting of the council unless specially appointed by the meeting so to do.

Town clerk to sign notice of meeting to elect a mayor on vacancy.

IX. If it shall be necessary by reason of the death, resignation, or lawful removal of the mayor to convene a meeting of the council to supply the vacancy, the notice for such meeting shall be signed by the town clerk (1).

In certain boroughs mayor may appoint a substitute for presiding alderman at elections.

X. If in any city, borough, or town corporate the number of aldermen does not exceed the number of wards, the mayor shall, in case of the illness or incapacity to act of any alderman at an election, appoint a councillor (not being a councillor representing or enrolled on the burgess list for the ward within which the election is to take place) to preside at such election (2).

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(1) See ante, p. 80, n. (3).

(2) See 5 & 6 Will. 4, c. 76, s. 43, ante, p. 70; 7 Will. 4 & 1 Vict. c. 78, s. 16, ante, p. 341.

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Extraordinary vacancy to be filled up ten days after notice to the mayor.

XI. If an extraordinary vacancy shall happen in the office of councillor, auditor, or assessor, the election to supply such vacancy shall take place not later than ten days after notice shall have been given to the mayor or town clerk by any two burgesses, anything to the contrary notwithstanding (1).

Mayor may appoint substitute for a deceased assessor.

XII. If an extraordinary vacancy shall happen in the office of assessor, the election to supply such vacancy shall be held before the alderman of the ward, the continuing assessor, and such burgess (not being a burgess representing or enrolled on the burgess list for that ward) as the mayor shall by writing under his hand appoint (2).

Result of election of aldermen how to be declared.

XIII. At every election of aldermen the persons, not exceeding the number of aldermen then to be chosen, who shall have the greatest number of votes according to the voting papers signed by the persons entitled to vote at such election, and delivered to and openly read by the mayor, shall be declared by the mayor to be and thereupon shall be duly elected aldermen: Provided always, that in every case of an equality of votes the mayor shall have a casting vote (3).

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(1) Before this Act, the election must have taken place not later than ten days after the vacancy: 5 & 6 Will. 4, c. 76, s. 47, ante, p. 75.

(2) See ante, p. 76.

(3) See 7 Will. 4 & 1 Vict. c. 78, s. 14, ante, p. 339.

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As to matters required to be done by overseers under 5 & 6 W. 4, c. 76.

XIV. Every matter by that Act of the sixth year of William the Fourth, or by any Act amending the same, directed to be done by the overseers of the poor of any parish, township, or place, may be lawfully done by the major part of such overseers; and whenever any notice is by that Act, or any Act amending the same, required to be given to the overseers of the poor of any parish, township, or place, such notice may be delivered to any one of such overseers, or may be left at his place of abode, or at his office for transacting parochial business.

Act to extend to cities, &c

XV. This Act applies to every city, borough, and town corporate in England specified in the schedules to the Act of the sixth year of William the Fourth, Chapter Seventy-six, and to every municipal corporation in England erected after the passing of that Act, and whether erected by charter under that Act or otherwise, and shall be construed and executed as if its provisions formed part of that Act, and the Acts from time to time in force amending or extending that Act.

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APPENDIX.

9 ANNE, CAP. 20.

An Act for rendering the Proceedings upon Writs of Mandamus, and Informations in the nature of a Quo Warranto, more speedy and effectual; and for the more easy trying and determining the Rights of Offices and Franchises in Corporations and Boroughs.

WHEREAS divers persons have of late illegally intruded themselves into, and have taken upon themselves to execute, the offices of mayors, bailiffs, portreeves, and other offices, within cities, towns corporate, boroughs, and places, within that part of Great Britain called England and Wales; and where such offices were annual offices, it hath been found very difficult, if not impracticable, by the laws now in being, to bring to a trial and determination the right of such persons to the said offices within the compass of the year; and where such offices were not annual offices, it hath been found difficult to try and determine the right of such persons to such offices, before they have done divers acts in their said offices prejudicial to the peace, order, and good government within such cities, towns corporate, boroughs and places, wherein they have respectively acted: And whereas divers persons who had a right to such offices, or to be burgesses or freemen of such cities, towns corporate, boroughs, or places, have either been illegally turned out of the same or have been refused to be admitted thereto, having in many of the said cases no other remedy to procure themselves to be respectively admitted, or restored to their said offices or franchises of being burgesses or freemen than by writs of mandamus, the proceedings on which are very dilatory and expensive, whereby great mischiefs have already ensued, and more are likely to ensue if not timely prevented: For remedy whereof, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the first day of Trinity Term, in the year of our Lord one thousand seven hundred and eleven, where any writ of mandamus shall issue out of the Court of Queen's Bench, the

Preamble.

After the first day of Trinity term, 1711, returns to

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writs of mandamus out of the Queen's Bench, &c. shall be made to the first writ.

courts of sessions of counties palatine, or out of any the courts of grand sessions in Wales, in any of the cases aforesaid, such person or persons who by the laws of this realm are required to make a return to such writ of mandamus, shall make his or their return to the first writ of mandamus.

As soon as the return is made, the prosecutor in such writ may plead, &c.;

II. And be it further enacted by the authority aforesaid, That, from and after the said first day of Trinity Term, as often as in any of the cases aforesaid any writ of mandamus shall issue out of any of the said courts, and a return shall be made thereunto, it shall and may be lawful to and for the person or persons suing or prosecuting such writ of mandamus, to plead to or traverse* all or any the material facts contained within the said return, to which the person or persons making such return shall reply, take issue, or demur; and such further proceedings, and in such manner, shall be had therein, for the determination thereof, as might have been had if the person or persons suing such writ had brought his or their action on the case for a false return†; and if any issue shall be joined on such proceedings, the person or persons suing such writ shall and may try the same in such place as an issue joined in such action on the case should or might have been tried; and in case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them upon a demurrer, or by nil dicit, or for want of a replication or other pleading, he or they shall recover his or their damages and costs, in such manner as he or they might have done in such action on the case as aforesaid; such costs and damages to be levied by capias ad satisfaciendum, fieri facias, or elegit; and a peremptory writ of mandamus shall be granted without delay, for him or them for whom judgment shall be given, as might have been if such return had been adjudged insufficient; and in case judgment shall be given for the person or persons making such return to such writ, he or they shall recover his or their costs of suit to be levied in manner aforesaid.

to which the person returning may reply, &c.

How the proceedings shall be.

Persons against whom damages shall be recovered not liable to be sued in other actions.

III. Provided always, That if any damages shall be recovered by virtue of this Act against any such person or persons making such return to such writ as aforesaid, he or they shall not be liable to be sued in any other action or suit for the making such return, any law, usage, or custom to the contrary thereof in any wise notwithstanding.

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* Where the writ set forth the title and qualification of A. to have his name inserted in the burgess roll of a borough, and alleged, amongst other things, in the terms of the 5 & 6 Will. 4, c. 76, s. 9, that he had paid all such rates, &c. as had become payable by him, a general traverse of this allegation in its terms was held good.

Quære, whether such allegation was necessary in the writ. *Reg* v. *Mayor of Dover*, 11 Q. B. 260; *S. C.*, affirmed on error.

† This provision is extended, by 1 Will. 4, c. 21, post, to writs of mandamus *in all other cases*, and the proceedings thereon. And as to the *writ of error* in mandamus, see 6 & 7 Vict. c. 67, post.

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How informations in the nature of quo warranto may be exhibited against such persons as intrude, &c. into offices, &c.

IV. And be it further enacted by the authority aforesaid, That from and after the said first day of Trinity Term, in case any person or persons shall usurp, intrude into, or unlawfully hold and execute any of the said offices or franchises, it shall and may be lawful to and for the proper officer in each of the said respective courts, with the leave of the said courts respectively, to exhibit one or more information or informations in the nature of a quo warranto, at the relation of any person or persons desiring to sue or prosecute the same, and who shall be mentioned in such information or informations to be the relator or relators against such person or persons so usurping, intruding into, or unlawfully holding and executing any of the said offices or franchises, and to proceed therein in such manner as is usual in cases of information in the nature of a quo warranto; and if it shall appear to the said respective courts that the several rights of divers persons to the said offices or franchises may properly be determined on one information, it shall and may be lawful for the said respective courts to give leave to exhibit one such information against several persons, in order to try their respective rights to such offices or franchises*; and such person or persons against whom such information or informations in the nature of a quo warranto shall be sued or prosecuted shall appear and plead as of the same term or sessions in which the said information or informations shall be filed, unless the court, where such information shall be filed, shall give further time to such person or persons against whom such information shall be exhibited to plead; and such person or persons who shall sue or prosecute such information or informations in the nature of a quo warranto, shall proceed thereupon with the most convenient speed that may be; any law or usage to the contrary thereof in anywise notwithstanding.

Judgment of ouster shall be given against persons found guilty of such usurpation;

V. And be it further enacted and declared by the authority aforesaid, That from and after the said first day of Trinity Term, in case any person or persons, against whom any information or informations in the nature of a quo warranto shall in any of the said cases be exhibited in any of the said courts, shall be found or adjudged guilty of an usurpation or intrusion into or unlawfully holding and executing any of the said offices or franchises, it shall and may be lawful to and for the said courts respectively, as well to give judgment of ouster against such person or persons of and from any of the said offices or franchises, as to fine such person or persons respectively, for his or their usurping, intruding into, or unlawfully holding and executing any of the said offices or franchises; and also it shall and may be lawful to and for

and the relator shall

* See *R.* v. *Foster*, 1 Burr. 573; *R.* v. *Brown*, 3 T. R. 574, n; see also 3 A. & E. 463.

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recover costs; if judgment be given for the defendant, he shall have costs against the relator.

the said courts respectively, to give judgment, that the relator or relators, in such information named, shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they, for whom such judgment shall be given, shall recover his or their costs therein expended against such relator or relators; such costs to be levied in manner aforesaid*.

The Court may allow a convenient time to return a mandamus, plead, reply, &c.

VI. And be it further enacted and declared by the authority aforesaid, That it shall and may be lawful to and for the said courts respectively, to allow to such person or persons respectively, to whom any writ of mandamus shall be directed, or against whom any information in the nature of a quo warranto in any of the cases aforesaid, shall be sued or prosecuted, or to the person or persons who shall sue or prosecute the same, such convenient time respectively, to make a return, plead, reply, rejoin or demur, as to the said courts respectively shall seem just and reasonable; anything herein contained to the contrary thereof in anywise notwithstanding.

The Act 4 Anne, c. 16, and all the statutes of jeofayles, shall be extended to writs of mandamus.

VII. And be it further enacted by the authority aforesaid, That after the said first day of Trinity Term an Act made in the fourth year of her Majesty's reign, intituled "An Act for the amendment of the law, and the better advancement of justice," and all the statutes of jeofayles, shall be extended to all writs of mandamus, and informations in the nature of a quo warranto, and proceedings thereon, for any the matters in this Act mentioned.

32 Hen. 8, c. 30.
18 El. c. 14.
27 El. c. 5.
21 Jac. 1, c. 13.
16 & 17 Car 2. c. 28.
No annual returning officer shall be re-elected: and such annual officer obstructing the election of his successor,

†VIII. And whereas in divers counties, boroughs, towns corporate and cinque ports, where the mayor, bailiff, or other officer or officers, to whom it belongs to preside at the election, and make return of any member to serve in Parliament, ought to be annually elected, the same person hath been re-elected into such office for several years successively, which hath been found inconvenient; be it enacted and declared by the authority aforesaid, That no person or persons who hath been or shall be in such annual office for one whole year, shall be capable to be chosen into the same office *for the year immediately ensuing;* and where any such annual officer or officers is or are to continue for a year, and until some other person or persons shall be chosen and sworn into such office, if any such officer or officers shall voluntarily and unlawfully obstruct and prevent the choosing another person or persons to succeed into such office at the time appointed for making another choice, shall forfeit one hundred pounds for every

to forfeit 100*l.*

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* The *coroner* of a borough, appointed under 5 & 6 Will 4, c. 76, s. 62, has not a corporate office within this statute; and therefore, upon judgment of ouster against him in a *quo warranto*, the relator is not entitled to costs. *Reg.* v. *Grimshaw*, 5 Dowl. & L. 249.

† This section is repealed by 3 & 4 Vict. c. 47, which see post. See *Reg.* v. *Corporation of Pembroke*, 8 Dowl. P. C. 302, ante, p. 354.

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such offence, to be recovered with costs of suit, by such person as will sue for the same in any of her Majesty's courts of record before mentioned, by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed, nor any more than one imparlance; one moiety thereof to her Majesty, her heirs and successors, and the other moiety to him or them that will sue for the same.

One moiety to the Queen, the other to the prosecutor.

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11 GEO. 1, CAP. 4.

An Act for preventing the Inconveniences arising for Want of Elections of Mayors or other Chief Magistrates of Boroughs or Corporations, being made upon the Days appointed by "Charter" or "Usage" for that Purpose; and directing in what Manner such Elections shall be afterwards made.

WHEREAS, in many cities, boroughs, and towns corporate within that part of Great Britain called England, Wales, and Berwick-upon-Tweed, the election of the mayor, bailiff or bailiffs, or other chief officer or officers, is by charter or ancient usage confined to a particular day or time, without any provision how to act or proceed in case no election be then made; and it frequently happens, that by such charter or usage particular acts are required to be done at certain times, in order to and for the completing of such elections, and by the contrivance or default of the person or persons who ought to hold the court or preside in the assembly where such elections are to be made or such acts to be done, or by accident it hath sometimes happened, and may frequently do so, if not timely prevented, that no courts or assemblies have been held, or elections made, or such acts done within the time fixed for that purpose; in which cases, if elections of such officers could not afterwards be made or completed, or, in consequence of such omission, the corporation should be dissolved, great mischiefs might ensue: for remedy and prevention whereof, be it enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if in any city, borough, or town corporate within that part of Great Britain called England, Wales, and Berwick-upon-Tweed, no election shall be made of the mayor, bailiff or bailiffs, or other chief officer or officers of such city, borough, or town corporate, upon the day or within the time appointed by charter or usage for such election, or such election being made, shall afterwards become void, whether such omission or avoidance shall happen through the default of the officer or officers who ought to hold the court or preside where such election is to be made, or by any accident or other means whatsoever, the corporation

Preamble.

Where election for mayors or other chief officers shall not be made on the days appointed by charter or usage.

Corporation not dissolv-

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ed or disabled from electing.

shall not thereby be deemed or taken to be dissolved or disabled from electing such officer or officers for the future: but, in any case, where no election shall be made as aforesaid, it shall and may be lawful for the members or persons of such city, borough, or corporation, who have right to vote, or be present at, or to do any other act necessary to be done, in order to or for the completing of such election, and they or such of them as shall not be hindered by any reasonable impediment or excuse, are hereby required respectively to meet or assemble together in the town-hall or other usual place of meeting for making such election within such city, borough, or town corporate, upon the day next after the expiration of the time within which such election ought to have been made, unless such day shall happen to be Sunday, and then upon the Monday following, between the hours of ten in the morning and two in the afternoon of the same day; and that the members or persons having right to vote at, or to do any other act necessary to be done in order to such election, or such of them as shall be so assembled or met together, shall forthwith proceed to the election of a mayor, bailiff or bailiffs, or other chief officer or officers of such city, borough, or corporation, and to do every act necessary to be done in order to or for the completing of such election, in such manner as was usual in, or in order to the election of such officer or officers, upon the day or within the time appointed by charter or usage for such election; and in case upon such day of meeting hereby appointed for such election, the mayor, bailiff or bailiffs, or other proper officer or officers, who ought to have held the court, or presided at the assembly for such election, or doing any other act necessary to be done in order to such election, if the same had been made or done on the day fixed, or within the time limited by charter or usage for that purpose, shall be absent, then such other person having a right to vote, being the nearest then present in place or office to the person or persons so absenting himself or themselves, shall hold the court, or preside in the meeting or assembly hereby appointed, and shall have the same power and authority in all respects therein as belongs to the mayor, bailiff or bailiffs, or other chief officer or officers of the same city, borough, or town corporate, at any court or assembly for the election of officers for such place, or for doing any other act necessary to be done in order to such election.

But may meet together at the town-hall, &c., on the day after,

and proceed to election.

Mayor, &c. absenting, the nearest in place may hold the court.

If no election be made, or the election become void, King's Bench may award a mandamus for electing*.

III. And it is hereby further enacted by the authority aforesaid, That if it shall happen that in any city, borough, or town corporate within that part of Great Britain called England, Wales, and Berwick-upon-Tweed, no election shall be made of the mayor, bailiff or bailiffs, or other chief officer or officers of such city, borough, or town corporate, upon

* See ante, p. 353.

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the day or within the time appointed by charter or usage for that purpose, and that no election of such officer or officers shall be made pursuant to the directions hereinbefore prescribed, or such election being made shall afterwards become void as aforesaid, in every such case it shall and may be lawful for his Majesty's Court of King's Bench, upon motion to be made in the said court, to award a writ or writs of mandamus requiring the members or persons of such city, borough, or town corporate, having a right to vote at, or to do any other act necessary to be done in order to such election respectively, to assemble themselves upon a day and at a time to be prefixed in such writ or writs, and to proceed to the election of a mayor, bailiff or bailiffs, or other chief officer or officers, as the case shall require, and to do every act necessary to be done in order to such election, or to signify to the said court good cause to the contrary, and thereupon to cause such proceedings to be had and made, as in any other cases of writs of mandamus granted by the said court for election of officers of corporations; and of the day and time appointed in and by any such writ or writs of mandamus for holding such assembly, public notice in writing shall, by such person as the said court shall appoint, be affixed in the market place or some other public place within such city, borough, or town corporate, by the space of six days before the day so appointed, and such officer or other person respectively shall preside in such assembly as ought to have presided at the election of such mayor, bailiff or bailiffs, or other chief officer or officers, or at the doing any other act necessary to be done in order to such election, in case the same had been made or done upon the day hereinbefore prescribed for that purpose.

Six days public notice to be given of the election.

III. And whereas in certain boroughs and towns corporate within that part of Great Britain called England, Wales, and Berwick-upon-Tweed, the mayor, bailiff or bailiffs, or other chief officer or officers, is or are to be nominated, elected, or "sworn" at a court-leet or view of frankpledge, or some other court, and by reason of the contrivance or default of the lord or his steward, or such other officer by or before whom such court ought to be held, in not holding the same, or by some accident, it hath happened and may hereafter happen, that no due nomination, election, or swearing of such mayor, bailiff or bailiffs, or other chief officer or officers, hath been or shall be had or made: Be it further enacted, by the authority aforesaid, That in every such case it shall and may be lawful to and for his Majesty's Court of King's Bench, upon motion to be made in the said court, to award a writ of mandamus requiring the lord or his steward, or other officer, by or before whom such court ought to be held, to hold or cause to be holden such court-leet or other court, and to do every other act necessary to be done by him in order to such nomination, election, or swearing, at

Where mayors, &c. are to be nominated or sworn at a court-leet, &c., and in default of the lord or steward no court be held.

King's Bench may award a mandamus for holding the court-leet.

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such day and time as shall be for that purpose judged proper by the said Court of King's Bench, and shall be appointed in such writ, or to signify to the said court good cause to the contrary, and thereupon to cause such proceedings to be had and made, as in other cases of writs of mandamus granted by the said court for holding of any court; and of the day and time appointed in and by any such writ of mandamus for holding such court, public notice in writing shall by such person as the said Court of King's Bench shall appoint, be affixed in the market-place, or some other public place within such borough or town corporate, by the space of six days before the day so appointed: and where a nomination of persons in order to the election of any such mayor, bailiff or bailiffs, or other chief officer or officers, is to be made at such court-leet or other court, in every such case after such nomination made, all and every other act and act necessary to be done in order to such election, shall be had, made, and done at such assembly, and in such manner and form, as the same ought to have been had, made, and done, in case such election had been made upon the day next after the expiration of the time prescribed for such election by the charter or usage of such borough or corporation according to the directions hereinbefore mentioned.

Mayors, &c. so elected, shall take the oaths before the presiding officer.

IV. And be it further enacted by the authority aforesaid, That the mayor, bailiff or bailiffs, or other chief officer or officers, who shall be elected pursuant to the directions of this Act, *shall take the oath or oaths by law required at the time of his admission into such office*[a], before such officer as shall preside at such election, in pursuance of this Act, who is hereby authorised and required to administer such oath or oaths; and shall have the same privileges, precedence, powers, and authorities, in all respects, as any mayor, bailiff or bailiffs, or other chief officer or officers, of the same city, borough, or corporation, elected on the days or times fixed by charter or usage for that purpose, ought to have or enjoy.

No such election valid, unless as great a number be present and concur, as required by charter, &c.

V. Provided always, that no such election, nor any act done in order thereunto, shall be valid, unless as great a number of persons, having right to be present at and vote therein, shall be present at the assembly holden for such purpose, and concur therein, as would respectively have been necessary to be present, and concur in such election or act, in case the same had been made or done upon the day or within the time appointed for that purpose by the charter or usage of such city, borough, or corporation, saving only, that the presence of the mayor, bailiff or bailiffs, or other chief officer or officers who ought to preside, shall not be necessary.

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[a] See 5 & 6 Will. 4, c. 76 s. 50, ante, p. 80; s. 104, ante, p. 195; 6 & 7 Will. 4, c. 105, s. 3, ante, p. 311; and the stats. 1 & 2 Vict. cc. 5 and 15, and 8 & 9 Vict. c. 52, ante, pp. 384, 386, and 474.

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Mayors absenting themselves, &c. shall suffer imprisonment for six months, &c.

VI. And be it further enacted by the authority aforesaid, That if any mayor, bailiff or bailiffs, or other chief officer or officers of any city, borough, or town corporate shall voluntarily absent himself or themselves from, or knowingly and designedly prevent or hinder the election of any other mayor, bailiff, or other chief officer in the same city, borough, or town corporate, upon the day or within the time appointed by charter or ancient usage for such election, the person or persons so offending being thereof lawfully convicted, shall, for every such offence, suffer imprisonment for the space of six months, without bail or mainprize, and shall be for ever disabled to take, hold, or exercise any office belonging to the same city, borough, or corporation.

No corporation dissolved or disabled by any omission already happened.

VII. And be it further enacted by the authority aforesaid, That no corporation shall be deemed or adjudged to be dissolved or disabled from electing a mayor, bailiff or bailiffs, or other chief officer or officers, by reason of any omission or default which hath already happened in not nominating, electing, or swearing a mayor, bailiff or bailiffs, or other chief officer or officers of such corporation, upon the day or within the time limited for such nomination, election, or swearing, by the charter or usage of such corporation, or by reason of the absence of the mayor, bailiff or bailiffs, or other chief officer or officers who ought to have presided at the assembly for such nomination, election, or swearing, or by reason of such election having become void as aforesaid, but every such corporation shall be adjudged, deemed, and taken to be, and to have been subsisting and capable of electing such officer or officers, to all intents and purposes; any such omission, absence, default or avoidance, or any defect, disability, or forfeiture, arising therefrom, in any wise notwithstanding.

This Act not to make void any charter;

nor to make good any election where judgment of ouster has been awarded since last day of Michaelmas Term, 1724.

VIII. Provided always, That nothing herein contained shall extend, or be construed to extend, to invalidate or make void any charter heretofore granted to and accepted by any city, borough, or town corporate, or any corporation within the same, or any of them, or any elections, or acts had, made, or done in pursuance of any such charter; nor to make good the election of any officer or member, or of any person claiming to be an officer or member of any city, borough, or corporation, against whom any judgment of ouster shall have been entered or given upon any information in the nature of a quo warranto, or whose election shall have been avoided upon any writ of mandamus on or before the last day of Michaelmas Term, in the year of our Lord one thousand seven hundred and twenty-four.

Return to be made to the first writ of mandamus.

IX. And be it further enacted by the authority aforesaid, That where any writ of mandamus shall issue out of the Court of King's Bench in any of the cases aforesaid, the person or persons to whom such writ shall be directed, shall make his or their return to the first writ of mandamus.

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12 GEO. 3, CAP. 21.

An Act for giving Relief in Proceedings upon Writs of Mandamus for the Admission of Freemen into Corporations; and for other Purposes therein mentioned.

Preamble.

WHEREAS divers persons, who have a right to be admitted citizens, burgesses, or freemen of divers cities, towns corporate, boroughs, cinque ports, and places within that part of Great Britain called England and Wales, being refused to be admitted thereto, have in many cases no other ordinary remedy to procure themselves to be admitted to the franchises of being citizens, burgesses, or freemen, than by writs of mandamus, the proceedings on which are very dilatory and expensive; and although any such writ of mandamus is obeyed, the person applying is nevertheless put to great and unnecessary trouble, delay, and expense: and whereas by the laws now in being, in many cases, no provision is made for giving costs to the party suing out any such writ where the same is obeyed; for remedy whereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of August, one thousand seven hundred and seventy-two, where any person shall be entitled to be admitted a citizen, burgess, or freeman of any such city, town corporate, borough, cinque port, or place, and shall apply to the mayor, or other person, officer or officers, in such city, town corporate, borough, cinque port, or place who hath or have authority to admit citizens, burgesses, and freemen therein, to be admitted a citizen, burgess, or freeman thereof; and shall give notice, specifying the nature of his claim, to such mayor, or other officer or officers, that if he or they shall not so admit such person a citizen, burgess, or freeman within one month from the time of such notice the Court of King's Bench will be applied to for a writ of mandamus, to compel such admission; and if such mayor, or other officer or officers shall, after such notice, refuse or neglect to admit such person, and a writ of mandamus shall afterwards issue to compel such mayor, or other officer or officers, to make such admission, and, in obedience to such writ, such person shall be admitted by the said mayor, or other officer or officers, a citizen, burgess, or freeman of such city, town corporate, borough, cinque port, or place, then such person shall (unless the court shall see just cause to the contrary) obtain and receive from the said mayor, or other officer or officers so neglecting or refusing as aforesaid, all the costs to which he shall have been put in applying for, obtaining and serving such writ of mandamus, and enforcing the

After August 1, 1772, any person entitled to be admitted a citizen, &c. of any city, and applying to the mayor, &c., for that purpose, giving him notice specifying the nature of his claim, &c.; if such mayor &c. shall refuse to admit such person, and a mandamus shall issue for compelling his admission,

the mayor to pay all costs.

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same, by a rule to be made by the court out of which such writ shall issue, for the payment thereof, together with the costs of applying for, obtaining, serving, and enforcing the said rule; and if the rule so to be made shall not be obeyed, then the same shall be enforced in such manner as other rules made by the said court are or may be enforced by law.

Freemen to be admitted to inspect the entries of admission, &c. and to take copies thereof

II. And in order that it may be known what persons are, from time to time, admitted freemen or burgesses of any city, corporation, borough, or cinque port, be it further enacted by the authority aforesaid, That the mayor, bailiff, town-clerk, or other officer of any city, corporation, borough, or cinque port, having the custody of or power over the records of the same, shall, upon the demand of any two freemen or burgesses, permit such freemen or burgesses, and their agent or agents, at any time whatsoever between the hours of nine in the morning and three in the afternoon, to inspect the entries of admission of freemen, burgesses, or other inferior corporations, and to take copies or extracts therefrom, paying for every such inspection two shillings and sixpence; and for every such copy or extract, not exceeding seventy-two words, the sum of four-pence; and so in proportion for all such copies or extracts: and if any mayor, bailiff, town-clerk, or other officer, shall refuse or deny the inspection of any such entries, or to give copies or extracts thereof, as before directed, he or they shall, for every such denial or refusal, forfeit and pay the sum of one hundred pounds to any person who shall sue for the same; to be recovered, with full costs of suit, by action of debt, in any of his Majesty's courts of record, at Westminster; in which action, it shall be sufficient for the plaintiff to allege in his declaration, that the defendant or the defendants is or are indebted to the said plaintiff in the sum of one hundred pounds for money had and received to his use; provided that such action shall be commenced within the space of one year after the cause of it shall have arisen, and not afterwards.

Mayor, bailiff, &c., denying inspection of such entries, or to give copies thereof, shall for every refusal forfeit 100*l.*, to be recovered by action of debt, to be commenced within one year after the cause shall have arisen.

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32 GEO. 3, Cap. 58.

An Act for the Amendment of the Law in Proceedings upon Informations in nature of Quo Warranto.

Preamble.

Whereas it would greatly tend to secure the freedom of election, and the quiet, tranquillity, and good order of cities, boroughs, and towns corporate, if a certain reasonable limitation of time should be by law established, beyond which no member or officer of any city, borough, or town corporate, should be disturbed in the enjoyment or exercise of his office or franchise which he should have held and enjoyed for such time; Be it enacted by the King's most excellent Majesty, by

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From the first day of Trinity Term 1793, defendants to informations in the nature of quo warranto, for the exercise of any office, may plead the holding it six years or more*.

and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of Trinity Term, in the year one thousand seven hundred and ninety-three, it shall and may be lawful for the defendant or defendants to any information in the nature of a quo warranto, for the exercise of any office or franchise in any city, borough, or town corporate, whether exhibited with leave of the court, or by his Majesty's attorney-general or other officer of the crown on behalf of his Majesty, by virtue of any royal prerogative or otherwise, and each and every of them severally and respectively, to plead that he or they had first actually taken upon themselves, or held or executed the office or franchise which is the subject of such information, six years or more before the exhibiting of such information, such six years to be reckoned and computed from the day on which such defendant so pleading was actually admitted and sworn into such office or franchise; which plea shall and may be pleaded either singly, or together with and besides such plea as he or they might have lawfully pleaded before the passing of this Act, or such several pleas as the court on motion shall allow; and if, upon the trial of such information, the issue joined upon the plea aforesaid shall be found for the defendant or defendants, or any of them, he or they shall be entitled to judgment, and to such and the like costs as he or they would by law have been entitled to, if a verdict and judgment had been given for him or them upon the merits of his or their title†.

Forfeiture of office within six years before information may be replied to such plea.

II. Provided always, and be it enacted, That in every such case the prosecutor of such information may reply to such plea any forfeiture, surrender, or avoidance, by the defendant, of such office or franchise happening within six years before the exhibition of such information, whereon the defendant may take issue, and shall be entitled to costs in manner aforesaid.

Title derived under an election not to be affected on account of defect in the title of the person electing, if he was in the exercise of his office six years previous to the information.

III. And be it further enacted by the authority aforesaid, That if any person or persons against whom any such information as aforesaid shall be exhibited, shall derive title under an election, nomination, swearing into office, or admission by any person or persons, the title of such person or persons against whom such information shall be exhibited, shall not be defeated or affected by reason or on account of any defect in the title of such person or persons so electing, nominating, swearing into office, or admitting, in case such person or persons under whom title shall be derived as aforesaid, was or were in exercise *de facto* of the franchise or office (in virtue of which he or they so elected, nominated, sworn in, or ad-

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* See *Reg.* v. *Harris*, 3 Per. & D. 266.
† See 7 Will. 4 & 1 Vict. c. 78, s. 23, ante, p. 344.

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mitted) at a period six years at least previous to the time of filing such information, and his or their title shall not have been questioned by any legal proceeding carried on with effect*.

Officer having the custody of corporation records to permit any member thereof to inspect the book of admission of freemen, &c. on penalty of 100*l.*

IV. And be it further enacted by the authority aforesaid, That the mayor, bailiff, sheriff, town-clerk, or other officer of any corporation having the custody of or power over the records of the same, shall, upon the demand of any person being an officer or member of such corporation, on the payment of one shilling, permit such person on any day or days except Christmas-day, Good Friday, and Sunday, between the hours of nine in the morning and three in the afternoon, to inspect the books and papers wherein the admission or swearing in of the freemen, burgesses, or other members or officers of such corporation shall be entered, and to have copies or minutes of the admission, or the entry of swearing in of any one or more of such freemen, burgesses, or other members or officers, upon paying sixpence for every one hundred words for writing the same; and if such mayor, bailiff, sheriff, town-clerk, or other officer shall refuse or deny to any person hereby entitled to demand it, the inspection of such books or papers, or to have copies or minutes thereof as aforesaid, such mayor, bailiff, sheriff, town-clerk, or other officer, shall, for every such offence, forfeit and pay the sum of one hundred pounds, together with full costs of suit, to him, her, or them, who shall inform and sue for the same within one year after such offence committed, by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, wherein no essoin, protection, wager of law, nor more than one imparlance shall be allowed.

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9 GEO. 4, CAP. 17.

An Act for repealing so much of several Acts as imposes the Necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments.

WHEREAS an Act was passed in the thirteenth year of the reign of King Charles the Second, intituled "An Act for the well-governing and regulating of Corporations;" and whereas another Act was passed in the twenty-fifth year of the reign of King Charles the Second, intituled "An Act for preventing Dangers which may happen from Popish Recusants;" and whereas another Act was passed in the sixteenth year of the reign of King George the Second, intituled "An Act to in-

13 Car. 2, stat. 2, c. 1.

25 Car. 2, c 2.

16 Geo. 2, c. 30.

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* See 6 & 7 Vict. c. 89, s. 1, ante, p. 462.

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demnify Persons who have omitted to qualify themselves for Offices and Employments within the Time limited by Law, and for allowing further Time for that Purpose; and also for amending so much of an Act made in the twenty-fifth year of the Reign of King Charles the Second, intituled 'An Act for preventing Dangers which may happen from Popish Recusants,' as relates to the Time for receiving the Sacrament of the Lord's Supper now limited by the said Act;" and whereas it is expedient that so much of the said several Acts of Parliament as imposes the necessity of taking the sacrament of the Lord's Supper according to the rites or usage of the Church of England, for the purposes therein respectively mentioned should be repealed; Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much and such parts of the said several Acts passed in the thirteenth and twenty-fifth years of the reign of King Charles the Second, and of the said Act passed in the sixteenth year of the reign of King George the Second, as require the person or persons in the said Acts respectively described to take or receive the sacrament of the Lord's Supper according to the rites or usage of the Church of England, for the several purposes therein expressed, or to deliver a certificate or make proof of the truth of such his or their receiving the said sacrament in manner aforesaid, or as impose upon any such person or persons any penalty, forfeiture, incapacity, or disability whatsoever for or by reason of any neglect or omission to take or receive the said sacrament, within the respective periods and in the manner in the said Acts respectively provided in that behalf, shall, from and immediately after the passing of this Act, be and the same are hereby repealed.

So much of recited Acts as require the persons therein described to receive the sacrament, for certain purposes repealed.

II. And whereas the Protestant Episcopal Church of England and Ireland, and the doctrine, discipline, and government thereof, and the Protestant Presbyterian Church of Scotland, and the doctrine, discipline, and government thereof, are by the laws of this realm severally established, permanently and inviolably: and whereas it is just and fitting, that on the repeal of such parts of the said Acts as impose the necessity of taking the sacrament of the Lord's Supper according to the rites or usage of the Church of England, as a qualification for office, a declaration to the following effect should be substituted in lieu thereof; Be it therefore enacted, That every person who shall hereafter be placed, elected, or chosen in or to the office of mayor, alderman, recorder, bailiff, town-clerk, or common councilman, or in or to any office of magistracy, or place, trust, or employment relating to the government of any city, corporation, borough, or cinque port within England and Wales or the town of Berwick-upon-Tweed, shall, within one calendar month next

Declaration to be made in lieu of the sacramental test.

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before *or upon his admission** into any of the aforesaid offices or trusts, make and subscribe the declaration following:

"I, *A. B.*, do solemnly and sincerely, in the presence of God, profess, testify, and declare, upon the true faith of a Christian†, that I will never exercise any power, authority, or influence which I may possess by virtue of the office of —— to injure or weaken the Protestant Church as it is by law established in England, or to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges to which such church, or the said bishops and clergy are or may be by law entitled." Form of declaration.

III. And be it enacted, That the said declaration shall be made and subscribed as aforesaid in the presence of such person or persons respectively who, by the charters or usages of the said respective cities, corporations, boroughs, and cinque ports, ought to administer the oath for due execution of the said offices or places respectively, and in default of such, in the presence of two justices of the peace of the said cities, corporations, boroughs, and cinque ports, if such there be, or otherwise in the presence of two justices of the peace of the respective counties, ridings, divisions, or franchises wherein the said cities, corporations, boroughs, and cinque ports are; which said declaration shall either be entered in a book, roll, or other record to be kept for that purpose, or shall be filed amongst the records of the city, corporation, borough, or cinque port. Declaration to be subscribed before magistrates, &c.

IV. And be it enacted, That if any person placed, elected, or chosen into any of the aforesaid offices or places, shall omit or neglect to make and subscribe the said declaration in manner above mentioned, such placing, election, or choice shall be void; and that it shall not be lawful for such person to do any act in the execution of the office or place into which he shall be so chosen, elected, or placed. In case of neglect to make the declaration, election to be void‡.

V. And be it further enacted, That every person who shall hereafter be admitted into any office or employment, or who shall accept from his Majesty, his heirs and successors, any patent, grant, or commission, and who by his admittance into such office or employment or place of trust, or by his acceptance of such patent, grant, or commission, or by the receipt of any pay, salary, fee, or wages by reason thereof, would by the laws in force immediately before the passing of this Act, have been required to take the sacrament of the Persons admitted into any office which heretofore required the taking of the sacrament shall make the declaration within six

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* *Reg.* v. *Humphery*, 10 A. & E. 335. See ante, 1 & 2 Vict. c. 5, further extended by 1 & 2 Vict. c. 15, as to the declaration to be made by Quakers, Moravians, and other Separatists.

† But see as to Jews, the 8 & 9 Vict. c. 52, ante, p. 474.

‡ See *Rex* v. *Parry*, 14 East, 549, and ante, note to sect. 50 of 5 & 6 Will. 4, c. 76. See also *Reg.* v. *Mayor &c. of Cambridge*, 10 A. & E. 365; 4 P. & D. 294; and note to sect. 66 of 5 & 6 Will. 4, c. 76, ante, p. 118.

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months, or the appointment be void.

Lord's Supper according to the rites or usage of the church of England, shall, within six calendar months after his admission to such office, employment, or place of trust, or his acceptance of such patent, grant, or commission, make and subscribe the aforesaid declaration, or in default thereof his appointment to such office, employment, or place of trust, and such patent, grant, or commission, shall be wholly void.

Declaration to be made in the Court of Chancery or King's Bench, or at the quarter sessions.

VI. And be it further enacted, that the aforesaid declaration shall be made and subscribed in his Majesty's High Court of Chancery, or in the Court of King's Bench, or at the quarter sessions of the county or place where the person so required to make the same shall reside; and the court in which such declaration shall be so made and subscribed shall cause the same to be preserved among the records of the said court.

Proviso as to naval and military officers under certain rank, and to officers of the revenue.

VII. Provided always, That no naval officer below the rank of rear admiral, and no military officer below the rank of major general in the army or colonel in the militia, shall be required to make or subscribe the said declaration, in respect of his naval or military commission; and that no commissioner of customs, excise, stamps, or taxes, or any person holding any of the offices concerned in the collection, management, or receipt of the revenues which are subject to the said commissioners, or any of the officers concerned in the collection, management, or receipt of the revenues subject to the authority of the postmaster-general, shall be required to make or subscribe the said declaration, in respect of their said offices or appointments: provided also, that nothing herein contained shall extend to require any naval or military officer, or other person as aforesaid, upon whom any office, place, commission, appointment, or promotion shall be conferred during his absence from England, or within three months previous to his departure from thence, to make and subscribe the said declaration until after his return to England, or within six months thereafter.

Persons now in possession of any office which heretofore required the taking of the sacrament confirmed in such possession, and indemnified from penalties.

VIII. And be it further enacted, That all persons now in the actual possession of any office, command, place, trust, service, or employment, or in the receipt of any pay, salary, fee, or wages, in respect of or as a qualification for which, by virtue of or under any of the before-mentioned Acts or any other Act or Acts, they respectively ought to have heretofore taken or ought hereafter to receive the said sacrament of the Lord's Supper, shall be and are hereby confirmed in the possession and enjoyment of their said several offices, commands, places, trusts, services, employments, pay, salaries, fees, and wages respectively, notwithstanding their omission or neglect to take or receive the sacrament of the Lord's Supper in manner aforesaid, and shall be and are hereby indemnified, freed, and discharged from all incapacities, disabilities, forfeitures, and penalties whatsoever, already incurred, or which might hereafter be incurred, in consequence

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of any such omission or neglect; and that no election of, or act done or to be done by any such person, or under his authority, and not yet avoided, shall be hereafter questioned or avoided by reason of any such omission or neglect, but that every such election and act shall be as good, valid, and effectual, as if such person had duly received the said sacrament of the Lord's Supper in manner aforesaid.

Omissions of persons to make the declaration not to affect others not privy thereto.

IX. Provided nevertheless, That no act done in the execution of any of the corporate or other offices, places, trusts, or commissions aforesaid, by any such person omitting or neglecting as aforesaid, shall by reason thereof be void or voidable as to the rights of any other person not privy to such omission or neglect, or render such last-mentioned person liable to any action or indictment.

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1 WILL. 4, CAP. 21.

*An Act to improve the Proceedings in Prohibition and on Writs of Mandamus**.

The enactments of 9 Anne, c. 20, relating to returns to writs of mandamus therein mentioned, and the proceedings thereon, extended to all other writs of mandamus.

III.† And whereas the provisions contained in a certain Act of Parliament passed in the ninth year of the reign of Queen Anne, intituled "An Act for rendering the Proceedings upon Writs of Mandamus and Informations in the Nature of a quo warranto more speedy and effectual, and for the more easy trying and determining the Rights of Offices and Franchises in Corporations and Boroughs," relating to the writs of mandamus therein mentioned, have been found useful and convenient, and the same ought to be extended to the proceeding on other such writs; Be it therefore enacted, That the several enactments contained in the said statute, relating to the return to writs of mandamus, and the proceedings on such returns, and to the recovery of damages and costs, shall be and the same are hereby extended and made applicable to all other writs of mandamus, and the proceedings thereon, except so far only as the same may be varied or altered by this Act‡.

For protection of certain officers to whom writs of

IV. And whereas writs of mandamus other than such as relate to the offices and franchises mentioned in or provided for by the said Act made in the ninth year of the reign of Queen Anne, are sometimes issued to officers and other per-

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* See post, 6 & 7 Vict. c. 67, enabling parties to sue out *writs of error* in proceedings on writs of mandamus; 6 & 7 Vict. c. 89, s. 5, for expediting the proceedings in writs of mandamus against corporate officers, ante, p. 467; and 17 & 18 Vict. c. 125, ss. 76, 77, empowering the Court to grant a rule for a *mandamus* absolute in the first instance, &c.

† Sects. 1 and 2 relate to proceedings in prohibition.

‡ See *Fall* v. *Reg.*, 1 Q. B. 636; 2 G. & D. 803.

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mandamus are directed.

sons, commanding them to admit to offices, or do or perform other matters, in respect whereof the persons to whom such writs are directed claim no right or interest, or whose functions are merely ministerial in relation to such offices or matters; and it may be proper that such officers and persons should, in certain cases, be protected against the payment of damages or costs, to which they may otherwise become liable; Be it therefore enacted, That it shall be lawful for the court to which application may be made for any writ of mandamus (other than such as relate to the said offices and franchises mentioned in or provided for by the said Act made in the reign of Queen Anne), if such court shall see fit so to do, to make rules and orders, calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to shew cause against the issuing of such writ and payment of costs of the application, and, upon the appearance of such other person, in compliance with such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are or may be given or mentioned by or in any Act passed or to be passed during this present session of Parliament, for giving relief against adverse claims made upon persons having no interest in the subject of such claims: Provided always, that the return to be made to any such writ, and issues joined in fact or in law upon any traverse thereof, or upon any demurrer, shall be made and joined by and in the name of the person to whom such writ shall be directed; but nevertheless, the same shall and may, if the court shall think fit so to direct, be expressed to be made and joined on the behalf of such other person as may be mentioned in such rules; and in that case, such other person shall be permitted to frame the return, and to conduct the subsequent proceedings at his own expense; and in such case, if any judgment shall be given for or against the party suing such writ, such judgment shall be given against or for the person or persons on whose behalf the return shall be expressed to be made, and who shall have the like remedy for the recovery of costs, and enforcing the judgment, as the person to whom the writ shall have been directed might and would otherwise have had.

Proceedings not to abate by removal of officer.

V. And be it further enacted, That in case the return to any such writ shall, in pursuance of the authority given by this Act, be expressed to be made on behalf of any other person as aforesaid, the further proceedings on such writ shall not abate or be discontinued by the death or resignation of, or removal from office of, the person having made such return, but the same shall and may be continued and carried on in the name of such person; and if a peremptory writ shall be awarded, the same shall and may be directed to any successor in office or right to such person.

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Costs to be in the discretion of the Court.

VI. And, for making some further provision for the payment of costs on applications for mandamus, be it further enacted, That in all cases of application *for any writ of mandamus whatsoever*, the costs of such application, whether the writ shall be granted or refused, and also the costs of the writ*, if the same shall be issued and obeyed, shall be in the discretion of the court, and the court is hereby authorised to order and direct by whom and to whom the same shall be paid†.

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1 & 2 WILL. 4, CAP. 58.

An Act to enable Courts of Law to give Relief against adverse Claims made upon Persons having no Interest in the Subject of such Claims. [20*th October*, 1831.]

Upon any application under 1 Will. 4, c. 21, and this Act, the Court to exercise such powers and make such rules as are given by or mentioned in this Act.

VIII. AND WHEREAS by a certain Act made and passed in the last session of Parliament, intituled "An Act to improve the Proceedings in Prohibition and on Writs of Mandamus," it was among other things enacted, that it should be lawful for the court to which application may be made for any such writ of *mandamus* as is therein in that behalf mentioned to make rules and orders, calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to shew cause against the issuing of such writ, and payment of the costs of the application, and upon the appearance of such other person, in compliance with such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case as were or might be given or mentioned by or in any Act passed or to be passed during that present session of Parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims; And whereas no such Act was passed during the then present session of Parliament; Be it therefore enacted, That

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* The costs of the writ now follow the judgment: 17 & 18 Vict. c. 125, ss. 70, 77.

† See *Rex* v. *Mayor &c. of Newbury*, 1 Q. B. 751, 2 G. & D. 109; *Reg.* v. *Eastern Counties Railway Company*, 2 Q. B. 579; *Reg.* v. *Scott*, 3 Dowl. N. S. 212; *Reg.* v. *Mayor &c. of Dartmouth*, 2 Dowl. N. S. 980: *Reg* v. *Churchwardens &c. of St. Pancras*, Id. 95; *Reg.* v. *Bingham*, 4 Q. B. 877; *Reg.* v. *Mayor &c. of Cambridge*, Id. 801; *Reg.* v. *Justices of West Riding*, 5 Q. B. 1; *Reg.* v. *Sheriff of Middlesex*, Id. 365; *Reg.* v. *Great Western Railway Company*, Id. 597; *Reg.* v. *Justices of Surrey*, 9 Q. B. 37; and the Reg. Gen. Q. B., E. T, 6 Vict. 3 G. & D. 612. The Court will, *prima facie*, always give costs under this section to the successful party.

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upon any such application as is in the said Act and hereinbefore mentioned, it shall be lawful for the court to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are given or mentioned by or in this present Act.

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2 & 3 WILL. 4, CAP. 64.

An Act to settle and describe the Divisions of Counties, and the Limits of Cities and Boroughs in England and Wales, in so far as respects the Election of Members to serve in Parliament. [11*th July*, 1832.]

Rules for the construction of the descriptions contained in Schedule (O.) to this Act.

XXXVI. AND BE IT ENACTED, That, subject to any direction to the contrary, the following rules shall be observed in the constructions of the several descriptions of boundaries contained in the said schedule hereto annexed marked (O.); (that is to say),

1. That the words "Northward," "Southward," "Eastward," "Westward," shall respectively be understood to denote only the general direction in which any boundary proceeds from the point last described, and not that such boundary shall continue to proceed throughout in the same direction to the point next described:

2. That when any road is mentioned merely by the name of the place to which such road leads, the principal road thither from the city, borough, or place of which the boundary is in course of description shall be understood:

3. That whenever a line is said to be drawn from, to, or through an object, such line shall, in the absence of any direction to the contrary, be understood to be drawn from, to, or through the centre of such object, as nearly as the centre thereof can be ascertained:

4. That every building through which or through any part whereof any boundary hereby established shall pass shall be considered as within such boundary: provided always, that if the boundaries of any two or more of the cities, boroughs, and places whereof the contents and boundaries are hereby settled and described shall pass through the same building or any part thereof, such building shall be considered as within that one of such two or more of the said cities, boroughs, and places which was before the passing of the hereinbefore recited Act entitled to return members or a member to serve in Parliament, or if neither or more than one of such two or more of the said cities, boroughs, and places shall have been so entitled, then within that one of them whereof the area as hereby established is the smallest:

5. That whenever any boundary by this Act established is

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said to pass along any other boundary, or along any road, lane, path, river, stream, canal, drain, brook, or ditch, the middle (as nearly as the same can be ascertained) of such other boundary, or of such road, lane, path, river, stream, canal, drain, brook, or ditch, shall be understood:

6. That the middle of any road or lane shall be understood as the middle of the carriageway along the same:

7. That when any boundary by this Act established is said to proceed along a road, lane, path, river, stream, canal, or drain, from or to an object, such boundary shall be understood to proceed from or to that point in the middle of such road, lane, path, river, stream, canal, or drain, from which the shortest line would be drawn to the centre of such object, as nearly as the centre thereof can be ascertained:

8. That the point at which any fence, hedge, wall, boundary, road, lane, path, river, stream, canal, drain, brook, or ditch, is said to cut, meet, join, cross, reach, or leave any fence, hedge, wall, boundary, road, lane, path, river, stream, canal, drain, brook, or ditch, shall be understood as that point at which a line passing along the middle of the fence, hedge, wall, boundary, road, lane, path, river, stream, canal, drain, brook, or ditch, so cut, met, joined, crossed, reached, or left, would be intersected by a line drawn along the middle of the fence, hedge, wall, boundary, road, lane, path, river, stream, canal, drain, brook, or ditch, so cutting, meeting, joining, crossing, reaching, or leaving, if such line were prolonged sufficiently far:

9. That when a line is said to be drawn to a road, lane, river, stream, or canal, such line shall be considered as prolonged to the middle of such road, lane, river, stream, or canal:

10. That by the words "Sea" and "Sea-coast" shall be understood the low-water mark:

11. That if any deficiency shall be found to exist in the line of any boundary described in the said schedule to this Act annexed, marked (O.), by reason of the intervention of any space between any two immediately consecutive points, such deficiency shall be supplied by a straight line to be drawn from the one to the other of such two immediately consecutive points.

Provision as to detached parts of parishes, &c., and for extra-parochial places.

XXXVII. And be it further enacted, That, notwithstanding the generality of any description contained in the said schedule to this Act annexed, marked (O.), no city, borough, or place, the contents whereof are specified in such schedule, shall include any part of any parish, township, hamlet, chapelry, tithing, manor, or liberty, which is detached from the main body of such parish, township, hamlet, chapelry, tithing, manor, or liberty, if, by reason of including such detached part, the boundary hereby established of such city, borough, or place, would not be continuous, unless such detached part shall, before the passing of this Act, have formed part of such

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city, borough, or place for the purpose of the election of members to serve in Parliament; but that all places, parochial or extra-parochial, which are surrounded by the contents of which any city, borough, or place is said in such schedule marked (O.) to consist, but for which no provision is made in such schedule (O.), shall be considered as included within such city, borough, or place, for the purpose of the election of members to serve in Parliament.

Misnomer not to vitiate, and the descriptions in Schedule (O.) to be considered as existing on the 1st Oct. 1831.

XXXVIII. Provided always, and be it enacted, That no misnomer or inaccurate description contained in this Act, or in any of the schedules hereto annexed, shall in anywise prevent or abridge the operation of this Act with respect to the subject of such description, provided the same shall be so designated as to be commonly understood; and that, for the purpose of identifying the descriptions contained in the said schedule (O.) with the subjects of such descriptions respectively, such descriptions shall, if now inapplicable, be held to apply to such subjects as they existed on the first day of October, one thousand eight hundred and thirty-one.

SCHEDULE (O).

1.—COUNTY OF BEDFORD.

Bedford.—The old borough of Bedford.

2.—COUNTY OF BERKS.

Abingdon.—The old borough of Abingdon.

Reading.—The old borough of Reading.

Wallingford.—The old borough of Wallingford; the several parishes of Brightwell, Sotwell, North Moreton, South Moreton, Bensington, Crowmarsh, and Newnham Murren; the liberty of Clapcot, and the extra-parochial precinct of the castle; and also all such parts of the several parishes of Cholsey, Aston Tirrel, and Aston Upthorpe as are situate on that side of the line next hereinafter described, on which the town of Wallingford lies; (that is to say,)

From Blewberry, along the road called "The Icknield Way," to the point on King's Standing Hill at which the same meets the boundary of the parish of Cholsey; thence, eastward, along the boundary of the parish of Cholsey to the point at which the same reaches the river Thames.

New Windsor.—The old borough of New Windsor, the lower ward of the castle, and so much of the parish of Clewer

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as is situated to the east of the following boundary; (that is to say,)

From the point at which the Goswell Ditch joins the river Thames, along the Goswell Ditch to the point at which the same meets Clewer Lane; thence, westward, along Clewer Lane to a point twenty-five yards distant from the point last described; thence in a straight line to the north-western corner of the enclosure wall of the Cavalry Barracks; thence along the western enclosure wall of the Cavalry Barracks to the point at which the same cuts the boundary of the parish of New Windsor.

3.—COUNTY OF BUCKINGHAM.

Buckingham.—The several parishes of Buckingham, Maidsmorton, Thornborough, Padbury, Hillesden, Preston Bissett, Tingewick, and Radclive-cum-Chackmore.

Great Marlow—The several parishes of Great Marlow, Little Marlow, Medmenham, and Bisham.

Chipping Wycombe.—The parish of Chipping Wycombe.

4.—COUNTY OF CAMBRIDGE.

Cambridge.—The old borough of Cambridge.

5.—COUNTY OF CHESTER.

NORTHERN DIVISION.

Macclesfield.—From the point at which the boundary of the borough of Macclesfield meets the Leek road near Moss Pool, southward, along the Leek road to the bridge over the Macclesfield canal; thence, eastward, along the Macclesfield canal to the point at which the same meets the boundary of the borough; thence, eastward, along the boundary of the borough to the point at which the same is again met by the Macclesfield canal; thence, northward, along the Macclesfield canal to the point at which the same crosses Shore's Clough brook; thence, westward, along Shore's Clough brook to the point at which the same meets the boundary of the township of Hurdsfield; thence, southward, along the boundary of the township of Hurdsfield to the point at which the same meets the boundary of the borough of Macclesfield; thence, westward, along the boundary of the borough of Macclesfield to the point first described.

Stockport.—The township of Stockport, and the respective hamlets of Brinksway and Edgeley, together with those parts

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of the respective townships of Brinnington and Heaton Norris which are included within the following boundaries respectively (that is to say):—

Brinnington.—From the point at which the boundary of the township of Stockport would be cut by a straight line to be drawn from the bridge over the river Mersey on the Bredbury and Hyde road to the Corn Mill in the township of Heaton Norris, between the Manchester and Stockport canal and the Reddish road, and now in the occupation of Mr. Walmsley, along such straight line to the point at which the same cuts the river Tame: thence along the river Tame to the point at which the same meets the boundary of the township of Stockport; thence, eastward, along the boundary of the township of Stockport to the point first described.

Heaton Norris.—From the point at which the boundary of the township of Heaton Norris meets the Manchester road, between a public house called the Ash, and Danby Lane, along the Manchester road to the point at which the same meets Danby Lane; thence along Danby Lane to the point at which the same is cut by a straight line drawn thereto from the first mile-stone on the Altringham road through the western angle of the public house called the Heaton Norris Club House; thence along the said straight line to the point at which the same meets the southern boundary of the township of Heaton Norris; thence eastward along the boundary of the township of Heaton Norris to the point first described.

SOUTHERN DIVISION.

Chester.—The old city of Chester, and also the space included within the following boundary; (that is to say)

From the second city boundary stone in Boughton Ford Mead, and on the eastern bank of the river Dee, in a straight line to the western extremity of a lane which leads from Stock lane to Boughton Heath; thence in a straight line to the southern extremity of Heath Lane; thence along Heath Lane to the point at which the same joins the Christleton road; thence along the Christleton road to the point at which the same is joined by New Lane; thence along New Lane to the point at which the same meets Filkin Lane; thence along Filkin Lane to the point at which the same joins, at Asp Tree Turnpike Gate, the Tarvin road; thence along the Tarvin road to Tarvin bridge; thence along the Nantwich canal to the point at which the same meets the old City boundary; thence, southward, along the old City boundary to the second City boundary stone aforesaid.

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6.—COUNTY OF CORNWALL.

EASTERN DIVISION.

Bodmin.—The several parishes of Bodmin, Lanivet, Lanhydrock, and Helland.

Launceston.—The old borough of Launceston and the parish of St. Stephen, and all such parts of the several parishes of Lawhitton, St. Thomas the Apostle, and South Petherwin as are without the old borough of Launceston.

Liskeard.—The parish of Liskeard, and also all such parts of the old borough of Liskeard as are without the parish of Liskeard.

WESTERN DIVISION.

Helston.—The old borough of Helstone, the parish of Sithney, and also the space included within the following boundary; (that is to say),

From Coverack Bridge, over the river Loo, in a straight line across the Wendron road to the western extremity of a lane leading by Wheal Ann to Graham Mine; thence along the said lane to the point at which the same meets a small stream; thence, southward, along the said stream to the point at which the same meets a lane leading from Wendron to Trecoose and Constantine; thence, eastward, along the said lane to Trecoose and Constantine, to the point at which the same meets the boundary of the parish of Wendron; thence, southward, along the boundary of the parish of Wendron to Coverack Bridge.

St. Ives.—The old borough of St. Ives, and the respective parishes of Lelant and Towednack.

Penryn and Falmouth.—From the point, on the north of Penryn, at which the boundary of the old borough leaves the boundary of the parish of Mylor, westward, along the boundary of the old borough to the point at which the same meets the road from Penryn to Helstone; thence in a straight line to the point, called Hill Head, at which the road to Penryn from Budock joins the road to Penryn from Constantine; thence in a straight line to the nearest point of the boundary of the parish of Falmouth; thence, southward, along the boundary of the parish of Falmouth to the point at which the same meets the boundary of the detached portion of the parish of Budock; thence in a straight line to the northern point at which the boundary of the detached portion of the parish of Budock leaves the boundary of the parish of Falmouth; thence, westward, along the sea coast to the point at which the same is met by the boundary of the parish of St.

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Gluvias; thence, eastward, along the boundary of the parish of St. Gluvias to the point first described.

Truro.—From Bosvigo Bridge over the Kenwyn river, and on the boundary of the old borough, along Bosvigo Lane, to the point at which the same joins the Redruth road; thence along the Redruth road to the point at which the same is joined, near Chapel-hill Gate, by Green-lane; thence along Green Lane to the point at which the same joins the Falmouth road; thence along an occupation road leading through Newham-Farm Land to the point at which such occupation road meets Newham-Farm Lane; thence along a fence which proceeds from Newham-Farm Lane, and is the south-western boundary of two fields respectively called Great Beef Close and Little Beef Close, to the point at which such fence meets the north-western fence of a field called Bramble Close; thence, eastward, along the fence of Bramble Close to the point at which the same reaches the shore of Calenick Creek; thence along the shore of Calenick Creek to Lower Newham Wharf; thence in a straight line across the Truro and Falmouth River to the south-eastern extremity of Sunny-Corner Wharf; thence in a straight line to Sunny Corner; thence in a straight line to the point at which Trenack Lane would be cut by a straight line to be drawn from the eastern extremity of Newham-Farm Lane to the point called Hill Head, at which St. Clement's Lane meets the St. Austell old turnpike road; thence in a straight line to Mitchell-Hill Gate on the old London road; thence in a straight line to the point at which the boundary of the old borough would be cut by a straight line to be drawn from Mitchell-Hill Gate to Kenwyn church; thence, northward, along the boundary of the old borough to Bosvigo Bridge.

7.—COUNTY OF CUMBERLAND.

EASTERN DIVISION.

Carlisle.—The ancient city of Carlisle, and the respective townships of Botchergate and Rickergate, and also all such part of the township of Caldewgate as is comprised within the boundary hereinafter described; (that is to say),

From the bridge over the river Caldew uniting the township of Caldewgate with the old city of Carlisle, southward, along the river Caldew to the point at which the same leaves the boundary of the township of Caldewgate; thence, westward, along the boundary of the township of Caldewgate to the point at which the road from the Kell houses to Carlisle joins the Wigton road; thence in a straight line to the point at which the bye-road from Stainton, over the Summer House ford in the river Eden, and across the canal from the

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Solway to Carlisle, meets the road from Great and Little Orton to Carlisle at a place called New Town; thence along the said road from Stainton to the point at which the same reaches the Summer House ford; thence along the boundary of the township of Caldewgate to the bridge first described.

WESTERN DIVISION.

Cockermouth.—The several townships of Cockermouth, Eaglesfield, Brigham, Papcastle, and Bridekirk; and also that detached portion of the township of Dovenby which lies between the respective townships of Papcastle, Bridekirk, and Cockermouth.

Whitehaven.—From the point on the sea coast, north of Whitehaven, at which the boundary of the township of Preston quarter meets the boundary of the township of Moresby, eastward, along the boundary of the township of Preston quarter, to the point at which the stream which flows through the village of Hensingham falls into the Poe Beck; thence in a straight line to the point on the sea coast at which the boundary of the township of Preston meets the boundary of the township of Sandwith; thence along the sea coast to the point first described.

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8.—COUNTY OF DERBY.

SOUTHERN DIVISION.

Derby.—The old borough of Derby.

9.—COUNTY OF DEVON.

NORTHERN DIVISION.

Barnstaple.—From the new bridge over Braddiford Water, on the new Braunton road, along the hedge which is the eastern boundary of the East Pillow Marsh Field, to the point at which the same cuts Poleshill Lane; thence along Poleshill Lane to the point at which the same meets Hall's Mill Lane; thence along Hall's Mill Lane to the point at which the same meets the Mill Leet; thence along the Mill Leet to the point at which the same meets Shearford Lane; thence along Shearford Lane to the point at which the same joins the Roborough road; thence along the Roborough road to the point at which the same is met by Smoky House Lane; thence along Smoky House Lane to the point at which the same is cut by a hedge which divides the field called "Great Mill Close" from the field called "Little Mill Close;" thence

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along the last-mentioned hedge and in a line in continuation of the direction thereof, to the point at which such line cuts the river Yeo; thence, eastward, along the boundary of the old borough of Barnstaple to the point at which the same meets, in Cooney Cut, the south-eastern fence of a field called "Ham;" thence along the last-mentioned fence to the point at which the same cuts Land Key road; thence in a straight line to the point on Rumson Hill at which Windy Ash Lane meets the Brindon cross-road; thence along Windy Ash Lane to the point at which Wood Street Water crosses the same; thence along Wood Street Water to the point at which the same joins the river Taw; thence along the river Taw to the point at which the same is joined by the river Yeo; thence along the river Yeo to the Swing Bridge on the new Braunton road; thence along the new Braunton road to the new bridge first described.

Tiverton.—The parish of Tiverton.

SOUTHERN DIVISION.

Ashburton—The parish of Ashburton.

Dartmouth.—From the point on the sea-coast at which the boundary of the parish of Townstall meets the boundary of the parish of Stoke Fleming, northward, along the boundary of the parish of Townstall, to the point at which the same meets the Stoke road; thence along the Stoke road, passing Swallaton Cross and Swallaton Gate, to the point at which the Stoke road meets the Milton road; thence along the Milton road to the point at which the same is met by the boundary of the parish of Townstall; thence, westward, along the boundary of the parish of Townstall to the point at which the same reaches Old Mill Creek; thence along the low-water mark to the point first described.

Devonport.—The parish of Stoke Damerill, and the township of Stonehouse.

Exeter.—From the turnpike gate on the Morton road, southward, along Cowick-lane to the point at which the same meets Stone-lane; thence along Stone-lane to the point at which the same meets the road from Exeter to Alphington; thence, southward, along the road from Exeter to Alphington to the point at which the same is joined by Marsh Barton-lane; thence along Marsh Barton-lane to the point at which the same reaches the western branch of the river Exe; thence in a straight line to the point at which Abbey-lane meets the eastern branch of the river Exe; thence, southward, along the Leat to the point at which the same is joined by the brook which runs down through East Wanford; thence along the said brook to the point at which the same crosses the Old Stoke and Tiverton road near the road to Mincing Lake Farm; thence along the Old Stoke and Tiverton road to the point at

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which the same meets the boundary of the county of the city; thence, northward, along the boundary of the county of the city to the point near Foxhays at which a branch of the river Exe, flowing through Exwick, joins the main stream thereof; thence in a straight line to the point at which the road from Exwick to the turnpike gate on the Morton road is joined by a road leading from Foxhays to Cleave; thence along the said road from Exwick to the turnpike gate on the Morton road to the point at which the same reaches such turnpike gate.

Honiton.—The parish of Honiton.

Plymouth.—From the north-eastern boundary stone in a straight line to the nearest point of the line of the embankment; thence, southward, along the line of the embankment to the point at which the same meets the boundary of the old borough; thence, southward, along the boundary of the old borough to the point first described.

Tavistock.—The parish of Tavistock, except the manor of Cudliptown.

Totnes.—The parish of Totnes, and the manor of Bridgetown.

10.—COUNTY OF DORSET.

Bridport.—From the toll-bar on the Exeter road, in a straight line, to the northern extremity of the fence which separates the field called "Marland Five Acres" from the field called "Higher Girtups and Dogholes;" thence along the western fence of the field Higher Girtups and Dogholes to the point at which the same reaches a lane leading into Mead Lane; thence along the said lane leading into Mead Lane to the point at which the same reaches Mead Lane; thence along Mead Lane to the point at which the same joins the Chard road; thence, northward, along the Chard road to the point at which the same is joined by the first lane on the right called "Green Lane;" thence in a straight line to Allington mill; thence in a straight line to the point at which Coneygere Lane joins the Hymore road; thence along the Coneygere Lane to the point at which the same joins the Beaminster road; thence in a straight line to the bridge over the river Asher, close by the Flood Houses; thence along the river Asher to the point at which the same would be cut by a straight line to be drawn from the eastern extremity of Coneygere Lane to the turnpike gate on the Dorchester road; thence along the said straight line to the turnpike gate on the Dorchester road; thence, southward, along the Dorchester road to the point at which the same is joined by Bothenhampton Lane; thence along Bothenhampton Lane to the point at which the same is met by the stream which forms the boundary between the respective parishes of Walditch

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and Bothenhampton; thence along the said stream to the point at which the same falls into the river Asher; thence down the river Asher (following the easternmost branch thereof at the points at which the same divides into two branches) to Squib's bridge; thence in a straight line to the south-eastern corner of Keemy Cottage, on the Bothenhampton road; thence in a straight line to the eastern extremity of Wonderwell Lane; thence, westward, along Wonderwell Lane to the point at which the same joins the Burton Bradstock road; thence, southward, along the Burton Bradstock road to Wich Gate; thence in a straight line through the Bombardier's House to the sea-coast; thence along the sea-coast to the eastern extremity of West Cliff; thence, northward, along West Cliff, and along the western boundary of the ship-yard of Messieurs Matthews and Company, to the point at which the same meets the boundary of the field called "Pitfield Marsh;" thence, northward, along the boundary of Pitfield Marsh to the point at which the same meets the river Brit at Ire Pool; thence up the river Brit to the point at which the same is joined by the stream which forms the boundary between the respective parishes of Symondsbury and Allington; thence along the last-mentioned stream to the point at which the same meets the fence which runs down thereto from the toll-bar at the Exeter road; thence along the last-mentioned fence to the toll-bar on the Exeter road.

Dorchester.—From the second, or middle bridge, on the Sherborne road, along the northern branch of the river Frome, passing under Grey's Bridge, to the point at which such northern branch is met, near Stanton's cloth factory, by the boundary of the parish of Fordington; thence, southward, along the boundary of the parish of Fordington to the point at which the same meets the Wareham road; thence, westward, along the Wareham road to the turnpike gate; thence in a straight line to the centre of the barrow called "Two Barrows;" thence in a straight line to the centre of the amphitheatre called Maumbury Ring; thence in a straight line to the centre of the barrow called Lawrence Barrow, near the Exeter road; thence in a straight line to the south-western corner of the barrack-wall; thence, northward, along the barrack-wall and palisade to the point at which such palisade meets the southern branch of the river Frome; thence in a straight line to the second or middle bridge on the Sherborne road.

Lyme Regis. - The respective parishes of Lyme Regis and Charmouth.

Poole.—The county of the town of Poole, the parish of Hamworthy, and the respective tithings of Parkstone and Longfleet.

Shaftesbury.—The old borough of Shaftesbury; the several

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out-parishes of Holy Trinity, St. James, and St. Peter; the several parishes of Cann, St. Rombald, Motcomb, East Stower, Stower Provost, Todbere, Melbury Abbas, Compton Abbas, Dowhead St. Mary, and St. Margaret's Marsh; and the chapelry of Hartgrove.

Wareham.—The old borough of Wareham: the parishes of Corfe Castle and Bere Regis; the several out-parishes of Lady Saint Mary, Holy Trinity, and Saint Martin; and the chapelry of Arne; that part of the parish of East Stoke which adjoins the eastern boundary of the old borough of Wareham: and also such part of the parish of East Morden as is comprised within the following boundary; (that is to say),

From the point at which the boundary of the parish of East Morden meets the southern boundary of Morden Park Wood, southward, along the boundary of Morden Park Wood, to the point at which the same meets the Sherford Lake; thence, eastward, along the Sherford Lake to the point at which the same meets the boundary of the parish of East Morden; thence, southward, along the boundary of the parish of East Morden to the point first described.

Weymouth and Melcombe Regis.—From the old sluice on the Wareham road in a straight line to the point at which the northern wall of the old Barrack Field meets the Dorchester road; thence along the said northern wall, and in a line in the direction thereof, to the point at which such line meets the boundary of the old borough; thence, northward, along the boundary of the old borough to the point at which the same meets the Upper Wyke road; thence, westward, along the Upper Wyke road, to the point at which the same is joined by a cross road leading to the Lower Wyke road, otherwise called Buxton's Lane; thence along the said cross road to the point at which the same joins the said Lower Wyke road; thence along the said Lower Wyke road to the point at which the same joins the Sandsfoot Castle road; thence, northward, along the Sandsfoot Castle road to the point at which the same is met by the footpath leading by Lovel's farm to Bincleves; thence along the said footpath to the point at which the same reaches the edge of the cliff at Bincleves; thence along the sea-coast to the old sluice aforesaid.

11.—COUNTY OF DURHAM.

NORTHERN DIVISION.

Durham.—From Shincliffe Bridge, over the river Wear, on the Stockton road, along the Stockton road to the point at which the same is met by a lane leading into the Darlington road; thence along the said lane to the point at which the same joins the Darlington road; thence along the Dar-

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lington road to the point at which the same is met by Potter's Lane; thence along Potter's Lane to the point at which the same meets Quarry Head Lane; thence along Quarry Head Lane to the point at which the same meets Margery Lane; thence along Margery Lane to the point at which the same meets Flass Lane; thence along Flass Lane to the point at which the same meets a lane leading into the newly cut turnpike-road which forms the commencement of the Newcastle road; thence along the last-mentioned lane to the point at which the same joins the said newly cut road; thence, northward, along the said newly cut road to the point at which the same joins the old line of the Newcastle road; thence in a straight line through the northernmost of the two out-buildings attached to Kepier's Hospital to the river Wear; thence along the river Wear to the point at which the same meets Kepier Lane; thence along Kepier Lane, passing under the old arches of the hospital, to the point at which the same lane is joined, on the south-west of High Grange farm, by a lane leading into the Loaning Head road; thence along the last-mentioned lane, crossing the Sunderland road, to the point at which the same lane joins the Loaning Head road; thence along the Loaning Head road to the point at which the same is met by a beck running close to the north of Pellaw wood and to the south of Gilesgate church; thence along the said beck to the point at which the same falls into the river Wear; thence along the river Wear to Shincliffe bridge.

Gateshead.—The parish of Gateshead, and also all such part of the chapelry of Heworth, in the parish of Jarrow, as is situated to the west of a straight line to be drawn from Kirton Toll-gate House to Blue Quarry Mill, and prolonged each way to the boundary of the parish of Gateshead.

South Shields.—The respective townships of South Shields and Westoe.

Sunderland.—The parish of Sunderland, and the several townships of Bishop Wearmouth, Bishop Wearmouth Panns, Monk Wearmouth, Monk Wearmouth Shore, and Southwick.

12.—COUNTY OF ESSEX.

NORTHERN DIVISION.

Colchester.—The old borough of Colchester.

Harwich.—The old borough of Harwich.

SOUTHERN DIVISION.

Maldon.—The old borough of Maldon, and the parish of Heybridge.

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13.—COUNTY OF GLOUCESTER.

EASTERN DIVISION.

Cheltenham.—The parish of Cheltenham.

Cirencester.—The parish of Cirencester.

Gloucester.—From the old city boundary stone, on the western side of the lane called Castle Lane, leading from Westgate street to the county gaol northward, along the old city boundary to the boundary stone, south of the London road, which marks the easternmost point of the old city boundary; thence in a straight line through the eastern corner of the mill upon the river Twiver, between the old city boundary and the tram road from the Gloucester and Berkeley Canal to Cheltenham, to the said tram road; thence along the said tram road to the point at which the same is met by Barton Lane; thence along Barton Lane to the point at which the same crosses the Sud Brook; thence along the Sud Brook to the point at which the same falls into the Gloucester and Berkeley Canal; thence along the Gloucester and Berkeley Canal to the point at which the same is met by the old city boundary; thence, westward, along the old city boundary to the point first described.

Stroud.—The several parishes of Stroud, Bisley, Painswick, Pitchcomb, Randwick, Stonehouse, Leonard Stanley, Kings Stanley, Rodborough, Minchinhampton, Woodchester, Avening, and Horsley, except that part of the parish of Leonard Stanley which is called Lorridge's Farm, and is surrounded by the parish of Berkley.

Tewkesbury.—The parish of Tewkesbury.

14.—COUNTY OF HANTS.

NORTHERN DIVISION.

Andover.—The respective parishes of Andover and Knights Enham, and the tithing of Foxcot.

Petersfield.—The old borough of Petersfield, and the tithing of Sheet; the several parishes of Buriton, Lyss, and Froxfield; the several tithings of Ramsden, Langrish, and Oxenbourn, in the parish of East Meon; and also the parish of Steep, except the respective tithings of North and South Ambersham.

Winchester.—From St. Winnal's Church in a straight line to the cottage on the new Alresford road, which is north-west of the White House on St. Giles's-hill; thence in a straight line to the turnpike gate at Barr End; thence in a straight line to the point at which the Gosport Road joins the South-

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ampton road; thence in a straight line to the point at which an angle is made in the northern bank of the lane leading from St. Cross to Compton Down, perpendicularly above the deep hollow in the said lane; thence in a straight line to the Cock Lane turnpike gate; thence in a straight line to the Three Horse Shoes public house on the Week road; thence in a straight line to the house on the Andover road, which is immediately north-west of the point at which the boundary of the city of Winchester crosses the same road; thence in a straight line to the south-eastern corner of the Fir Plantation on the western side of the Basingstoke road; thence in a straight line to St. Winnal's church.

SOUTHERN DIVISION.

Christchurch.—The parish of Christchurch, and the chapelry of Holdenhurst, except such part of the tithing of Hurn in the parish of Christchurch as is situated to the north of the following boundary; (that is to say),

From the point at which the western boundary of the parish of Christchurch crosses the road from Dudsbury to Hurn Bridge, in a straight line to the south-western corner of Merritown Common; thence along the southern boundary of Merritown Common and of Hurn Common to the point at which the southern boundary of Hurn Common reaches the Moor's river; thence in a straight line to the southern boundary post of the parish of Christchurch on the Ringwood road, close by Fillybrook plantation.

Lymington.—The parish of Lymington, and also such part of the parish of Boldre as is comprised within the following boundary; (that is to say),

From East-end Bridge, on the eastern boundary of the parish of Boldre, in a straight line through Boldre church to the western bank of Lymington river; thence, southward, along the western bank of Lymington river to the point at which the same meets the boundary of the parish of Boldre; thence, southward, along the boundary of the parish of Boldre to East-end Bridge aforesaid.

Portsmouth.—The old borough of Portsmouth and the parish of Portsea.

Southampton.—The town and county of the town of Southampton.

15.—COUNTY OF HEREFORD.

Hereford.—The whole space contained within the boundary of the liberties of the city of Hereford, including Castle Green.

Leominster.—The parish of Leominster.

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16.—COUNTY OF HERTFORD.

St. Alban's.—From the turnpike gate on the London road, east of St. Alban's, called St. Alban's Gate, in a straight line to the point at which the boundary of the old borough crosses the river at the bottom of the Cotton Mill Lane; thence, southward, along the boundary of the old borough to the point at which the western boundary of the parish of St. Alban leaves the river; thence, in a straight line, through the south-eastern corner of St. Michael's churchyard, to the Hempstead road; thence, northward, along the Hempstead road to the point at which the same meets the road leading to Gorehambury, formerly the Redbourn road; thence, in a straight line, to the western extremity of the tongue of land in the river just above Kingsbury fishpond; thence, in a straight line, to the side bar belonging to Kingsbury turnpike gate, by the side of the new Redbourn road; thence, eastward, in a straight line to the point at which the boundary of the old borough meets Luton Lane; thence, eastward, along the boundary of the old borough to the point at which the same crosses Sweetbriar Lane; thence in a straight line to St. Alban's turnpike gate aforesaid.

Hertford.—From the corporation post at the bottom of Port Hill, along the Bengeo road to the point at which the same is cut by the northern fence of Port Hill Field; thence along the northern and western fences of Port Hill Field to the point at which such western fence cuts the Mole Wood Mill road; thence, in a straight line, through Sele Farm-bridge to the Stevenage road; thence, in a straight line, to the point at which the Hertingfordbury road is crossed by the boundary of the out-borough of Hertford; thence, southward, along the boundary of the out-borough of Hertford to the Corporation post at the bottom of Port Hill.

17.—COUNTY OF HUNTINGDON.

Huntingdon.—The old borough of Huntingdon, and the parish of Godmanchester.

18.—COUNTY OF KENT.

EASTERN DIVISION.

Canterbury.—From the westernmost point, near St. Jacob's, at which the boundary of the city liberties meets the Ashford road, in a straight line to the point at which the respective boundaries of the parishes of Harbledown, St. Dunstan, and Holy Cross Westgate meet; thence, northward, along the

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eastern boundary of the parish of Harbledown to the point at which the same turns north-westward near the Whitstable road; thence, in a straight line, in the direction of St. Stephen's Church, to the point at which such straight line cuts the boundary of the parish of St. Stephen; thence, eastward, along the boundary of the parish of St. Stephen, to the point at which the same meets the boundary of the parish of Holy Cross Westgate; thence, in a straight line, through the point at which the road to St. Stephen's Church meets the road to Sturry, to the nearest branch of the river Stour; thence along the said branch of the river Stour to the corporation stone, No. 5; thence, eastward, along the boundary of the city liberties, including the whole of the borough of Longport, to the point first described.

Dover.—From the jetty, along the boundary of the liberties of the town and port of Dover, on the eastern side of the castle, and through the parish of Charlton to the boundary stone at which the boundary of the said liberties meets the boundary of the parish of Buckland in Back Lane; thence, along Back Lane, to the point at which the same meets the road leading down to Crabbe turnpike gate on the London road; thence, in a straight line, in a westerly direction, to the point at which the boundary of the parish of Buckland crosses the London road; thence along the boundary of the parish of Buckland to the point at which the same crosses the river; thence, in a straight line to the point at which the boundary of the parish of Buckland meets the road leading to Combe farm; thence along the boundary of the parish of Buckland to the point at which the boundary of the parish of Hougham is intersected by the boundary of the liberties aforesaid; thence along the boundary of the said liberties to the sea-coast; thence along the sea-coast to the jetty.

Hythe.—The old borough of Hythe; the liberties of the town of Folkstone; and the several parishes of West Hythe, Saltwood, Cheriton, Folkstone, and Newington, except that detached part of the parish of Newington called Marwood Land.

Sandwich.—The several parishes of St. Mary, St. Peter, and St. Clement; and the extra-parochial precinct of St. Bartholomew, Sandwich; the parish of Deal; and the parish of Walmer.

WESTERN DIVISION.

Chatham.—From the easternmost point at which the boundary of the city of Rochester meets the right bank of the river Medway, southward, along the boundary of the city of Rochester to the boundary stone of the said city marked 5; thence in a straight line to the windmill in the parish of Chatham on the top of Chatham Hill; thence, in a straight line, to the oil windmill in the parish of Gillingham, between

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the village of Gillingham and the fortifications; thence, in a straight line, through Gillingham Fort to the right bank of the river Medway; thence along the right bank of the river Medway to the point first described.

Greenwich.—From the point at which the Royal Arsenal Canal at Woolwich joins the river Thames, along the said canal to the southern extremity thereof; thence in a straight line to the south-western corner of the Ordnance storekeeper's house; thence in a straight line, in the direction of a stile in the footpath from Woolwich to Plumstead Common, over Sandhill, to the boundary of the parish of Woolwich; thence, southward, along the boundary of the parish of Woolwich to the point at which the same meets the boundary of the parish of Charlton; thence, westward, along the boundary of the parish of Charlton to the point at which the same turns southward near the Dovor road; thence along the Dovor road to the nearest point of the boundary of the parish of Greenwich; thence, westward, along the boundary of the parish of Greenwich to the point at which the same turns abruptly to the south, close by the Dovor road; thence in a straight line, in a westerly direction, to the nearest point of the boundary of the parish of Greenwich; thence, westward, along the boundary of the parish of Greenwich to the point at which the same meets the boundary of the parish of Saint Paul Deptford; thence, southward, along the boundary of the parish of Saint Paul Deptford to the point at which the same meets the river Thames; thence along the river Thames to the point first described.

Maidstone.—The old borough of Maidstone.

Rochester.—The whole space comprised within the boundaries of the liberties of the old city of Rochester, and also such parts of the respective parishes of Strood and Frindsbury as are situated between the left bank of the river Medway and the boundary hereafter described; (that is to say),

From the entrance from the river Medway of the Thames and Medway canal, along a footpath which leads up the hill towards Upnor, to the point (on the top of the hill) at which the same is met by a road or path leading towards Frindsbury church; thence along such road or path to the point at which the same joins Parsonage Lane; thence along Parsonage Lane to the point at which the same joins the road from Frindsbury to Hoo; thence in a straight line to the northernmost angle of the boundary of the parish of Strood; thence, westward, along the boundary of the parish of Strood to the point at which the same meets the London road; thence towards Rochester along the London road to the point at which the same is joined by the road from the Three Crouches; thence in a straight line to the point at which the left bank of the river Medway would be cut by a straight line to be drawn from the point last described to Fort Clarence.

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19.—COUNTY OF LANCASTER.

NORTHERN DIVISION.

Blackburn.—The township of Blackburn.

Clitheroe.—The respective chapelries of Downham and Clitheroe; and the four townships of Walley, Wiswall, Pendleton, and Henshorn, and Little Mitton and Colcoats.

Lancaster.—From the point on the river Lune at which the respective boundaries of the townships of Lancaster, Skerton, and Heaton-with-Oxcliffe meet, westward, along the boundary of the township of Lancaster to the point at which the respective boundaries of the townships of Lancaster, Bulk, and Quernmore meet; thence in a straight line to the aqueduct bridge over the Caton Road; thence, northward, along the canal from Preston to Kendal to the fourth bridge over the same from the aqueduct; thence in a straight line to the point at which Bracken Lane meets Scale Lane; thence along Scale Lane to the point at which the same reaches the river Lune; thence along the river Lune to the point first described.

Preston.—The old borough of Preston, and the township of Fishwick.

SOUTHERN DIVISION.

Ashton-under-Lyne.—The whole space over which the provisions of an Act passed in the seventh and eighth years of the reign of his late Majesty King George the Fourth, and intituled "An Act for lighting, cleansing, watching, and otherwise improving the Town of Ashton-under-Lyne in the County Palatine of Lancaster, and for regulating the Police thereof," at present extend.

Bolton Le Moors.—The several townships of Great Bolton, Little Bolton, and Haulgh, except that detached part of the township of Little Bolton which is situate to the north of the town of Bolton.

Bury.—From the point in the hamlet of Starling at which a boundary stone marks the boundary of the respective townships of Elton and Ainsworth, along the lane from Starling to Walshaw Lane, to the point in the hamlet of Walshaw Lane at which a boundary stone marks the boundary of the respective townships of Elton and Tottington Lower End; thence, eastward, along the boundary of the township of Elton to the point at which the same meets the Woodill Brook; thence in a straight line to the point at which the Pigs Lea brook falls into the river Irwell; thence, eastward, along the boundary of the township of Bury to the point at which the same meets the boundary of the township of Elton; thence, westward, along the boundary of the township of Elton to the point first described.

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Liverpool.—From the western extremity of Dingle Lane, on the south of the town, along Dingle Lane, to the point at which the same meets Ullet Lane; thence along Ullet Lane to the point at which the same meets Lodge Lane; thence along Lodge Lane to the point at which the same meets Smithdown Lane; thence along Smithdown Lane to the point at which the same is met by the boundary of the township of Wavertree; thence, northward, along the boundary of the township of Wavertree to that point thereof which is nearest to the south-eastern corner of the wall of the new Botanic Gardens; thence in a straight line to the said south-eastern corner; thence along the eastern wall of the new Botanic Gardens to the point at which such wall reaches Edge Lane; thence, eastward, along Edge Lane to a point seventy-four yards distant from the point last described; thence in a line parallel to the new street called Grove Street to the point at which such parallel line reaches the London road; thence along the London road to the point at which the same is joined by Deane Street; thence in a straight line to the boundary stone in Rake Lane, near the southern extremity of Whitefield Lane; thence, northward, along the boundary of the township of Everton to the point at which the same joins the boundary of the township of Kirkdale; thence, northward, along the boundary of the township of Kirkdale, to the point at which the same reaches the high-water mark of the river Mersey; thence along the high-water mark of the river Mersey to that point thereof which is nearest to the point first described; thence in a straight line to the point first described.

Manchester.—The several townships of Manchester, Chorlton Row otherwise Chorlton-upon-Medlock, Ardwick, Beswick, Hulme, Cheetham, Bradford, Newton, and Harpur Hey.

Oldham.—The several townships of Oldham, Chadderton, Crompton, and Royton.

Rochdale.—The space defined in the 101st section of an Act passed in the sixth year of the reign of his late Majesty King George the Fourth, and intituled "An Act for lighting, cleansing, watching, and regulating the Town of Rochdale in the County Palatine of Lancaster."

Salford.—From the northernmost point at which the boundary of the township of Salford meets the boundary of the township of Broughton, northward, along the boundary of the township of Broughton, to the point at which the same meets the boundary of the township of Pendleton; thence, westward, along the boundary of the township of Pendleton to the point at which the same meets the boundary of the detached portion of the township of Pendlebury; thence, southward, along the boundary of the detached portion of the township of Pendlebury to the point at which the same meets the boundary of the township of Salford; thence, west-

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ward, along the boundary of the township of Salford to the point first described.

Warrington.—The respective townships of Warrington and Latchford; and also those two detached portions of the township of Thelwall which lie between the boundary of the township of Latchford and the river Mersey.

Wigan.—The township of Wigan.

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20. COUNTY OF LEICESTER.

SOUTHERN DIVISION.

Leicester.—The old borough of Leicester, and the space over which the magistrates of the old borough of Leicester at present exercise a jurisdiction concurrently with the magistrates of the county of Leicester, including the Castle View.

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21. COUNTY OF LINCOLN.

PARTS OF LINDSEY.

Lincoln.—The old city of Lincoln, the bail and close, and a certain common belonging to the freemen of Lincoln, called Canwick Common, together with all extra-parochial places, if any, which are surrounded by the old city of Lincoln, the bail and close, and the said common, or any or either of them, or by the boundaries or boundary of any or either of them.

Great Grimsby.—The several parishes of Great Grimsby, Great Coates, Little Coates, Bradley, Laceby, Waltham, Scartho, Clee, Weelsby, and Cleethorpes.

PARTS OF KESTEVEN AND HOLLAND.

Boston.—The old borough of Boston, the parish of Skirbeck, and the hamlet of Skirbeck Quarter, including the fen allotment of the hamlet of Skirbeck Quarter, but not the fen allotment of the parish of Skirbeck.

Grantham.—The parish of Grantham (including the several townships of Spittlegate, Manthorpe with Little Gonerby, and Harowby), and that part of the parish of Somerby which is contained between the boundary of the parish of Grantham and High Dyke.

Stamford.*—The old borough of Stamford, and such part

* See *Reg.* v. *Mitchell*, 2 Q. B. 636, 2 G. & D. 274, cited ante, p. 233; and *Beadsworth* v. *Torkington*, 1 Q. B. 782, 1 G. & D. 482, ante, pp. 295, 282.

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of the parish of Saint Martin Stamford Baron as lies between the boundary of the old borough and the following boundary; (that is to say),

From the westernmost point at which the boundary of the parish of Saint Martin meets the boundary of the old borough, southward, along the boundary of the parish of Saint Martin, to the northernmost point at which the same meets the Woothorpe road; thence in a straight line to the southern tower, on the London road, of the gateway to Burghley House; thence, northward, along the wall of Burghley Park to the point at which the same meets an occupation road called the "New Road," which runs from the Barnack and Pilsgate road to the river Welland; thence along the said occupation road and in a line in continuation of the direction thereof, to the point at which such line cuts the boundary of the old borough.

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22. COUNTY OF MIDDLESEX.

Finsbury.—The several parishes of Saint Luke, Saint George the Martyr, Saint Giles-in-the-Fields, Saint George Bloomsbury, Saint Mary Stoke Newington, and Saint Mary Islington; the several liberties or places of Saffron Hill, Hatton Garden, Ely Rents, Ely Place, the Rolls, Glass House Yard, and the Charter House; Lincoln's Inn and Gray's Inn; the parish of Saint James and Saint John Clerkenwell, except that part thereof which is situate to the north of the parish of Islington; those parts of the respective parishes of Saint Sepulchre and Saint Andrew Holborn, and of Furnival's Inn and Staple Inn respectively, which are situated without the liberty of the city of London.

London.—The whole space contained within the exterior boundaries of the liberties of the city of London, including the Inner Temple and the Middle Temple.

Marylebone.—The several parishes of Saint Marylebone, Saint Pancras, and Paddington.

Tower Hamlets.—The several divisions of the liberty of the Tower, and the Tower division of Ossulston Hundred.

Westminster.—The old city and liberties of Westminster, and the Duchy Liberty.

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23. COUNTY OF MONMOUTH.

MONMOUTH DISTRICT.

Monmouth.—The parish of Monmouth, and all such parts of the old borough of Monmouth as lie without the parish of Monmouth.

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Newport.—From the point, on the south of the town, at which the Mendle Gief Road is joined by a husbandry road leading to Hundred Acres Gout, along the Mendle Gief Road, to the point at which the same meets the Cardiff Road; thence, westward, along the Cardiff Road to the point at which the same meets the streamlet from Cwrty-bella Well; thence along the said streamlet to the pool on the western side of Friar's garden wall; thence along the watercourse up from the said pool to another pool on the western side of Bull Field; thence along the western fence of Bull Field to the point at which the same fence cuts the road from Stow to Risca; thence, westward, along the road from Stow to Risca to the point at which the same is cut by the fence which runs northward from the east end of the cottages belonging to John Ricketts; thence along the last-mentioned fence to the north-western corner of the field of which it is the western boundary; thence, eastward, along the northern fence of the last-mentioned field to the point at which the same is intersected by the fence of the adjoining field; thence, northward, along the last-mentioned fence to a well head; thence along the stream leading therefrom to the point at which the same meets the boundary of the old borough; thence, northward, along the boundary of the old borough to the point at which the same meets the river Usk at the mouth of Cridan Pill; thence along the river Usk to the point at which the same is joined by a Pill opposite the castle; thence along the said Pill to the Gout; thence along the watercourse, in a direction nearly due east, to the point at which the same meets the new road to Caerleon; thence along the new road to Caerlon to the point at which the same joins the old road to Christ Church; thence along the New Reen to the point at which the same meets Liswerry Pill; thence along Liswerry Pill to the point at which the same joins the river Usk; thence along the river Usk to the point at which the same is joined by Hundred Acres Gout; thence along Hundred Acres Gout to the point at which the same is met by the said husbandry road leading thereto from the Mendle Gief road; thence along the said husbandry road to the point first described.

Usk.—From the bridge on the north of the town, called "Cwm-cayo Bridge," along the brook over which the said bridge is built, to the point at which the same falls into the river Usk; thence down the river Usk, and along the boundary of the old borough, to the point at which the same cuts the mill stream; thence in a straight line to the farm house of Little Castle Farm; thence along the eastern side of the fence of the farmyard of Little Castle Farm to the north-eastern corner of such farmyard; thence in a straight line to the oak tree in the wood hedge on the summit of Lady Hill; thence in a straight line to the point at which Cwm-cayo

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Brook would be cut by a straight line to be drawn from the tree last described to Cwm-cayo Bridge, thence along Cwm-cayo Bridge, thence along Cwm-cayo Brook to Cwm-cayo Bridge.

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24. COUNTY OF NORFOLK.

EASTERN DIVISION.

Norwich.—The city and county of the city of Norwich, together with all such extra-parochial places as are contained within the outer boundary of the city and county of the city of Norwich.

Great Yarmouth.—The old borough of Great Yarmouth and the parish of Gorlestone.

WESTERN DIVISION.

King's Lynn.—The old borough of King's Lynn.

Thetford.—The old borough of Thetford.

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25. COUNTY OF NORTHAMPTON.

NORTHERN DIVISION.

Peterborough.—The parish of Saint John Baptist, Peterborough, together with the extra-parochial district known by the name of "the Minster Precincts."

SOUTHERN DIVISION.

Northampton.—The old borough of Northampton.

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26. COUNTY OF NORTHUMBERLAND.

NORTHERN DIVISION.

Berwick-upon-Tweed.—The parish of Berwick, and the respective townships of Tweedmouth and Spittal.

Morpeth.—The several townships of Morpeth, Buller's Green, Newminster Abbey, Catchburn with Morpeth Castle and Stobhill, Hepscott, and Tramwell with High Church, and the parish of Bedlington.

SOUTHERN DIVISION.

Newcastle-upon-Tyne.—The town and county of the town of Newcastle, and the several townships of Byker, Heaton, Jesmond, Westgate, and Elswick.

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Tynemouth and North Shields.—The several townships of Tynemouth, North Shields, Chirton, Preston, and Cullercoats.

27. COUNTY OF NOTTINGHAM.

NORTHERN DIVISION.

Nottingham.—The county of the town of Nottingham.

SOUTHERN DIVISION.

Newark-upon-Trent.—The old borough of Newark.

28.—COUNTY OF OXFORD.

Banbury.—The parish of Banbury.

Oxford.—From the tree on the east of the city called "Joe Pullen's Tree," in a straight line to the boundary stone in the lane called "Mrs. Knapp's Free Board;" thence along the said lane to the western extremity thereof; thence in a straight line to the centre of the island situate at the junction of the stream called "Harson's Heat" with the river Charwell; thence, westward, along the river Charwell to the point at which the same joins the old city boundary; thence, westward, along the old city boundary to the point at which the river Charwell divides into two streams; thence along the easternmost of such two streams to King's Mill; thence in a straight line to the easteremost part of King's Mill; thence in a straight line to "Joe Pullen's Tree."

New Woodstock.—The old borough of New Woodstock; the several parishes of Bladon, Begbrook, Shipton-on-Cherwell, Hampton Gay, Tackley, Wootton, Stonesfield, Coombe, and Handborough; the parish of Kidlington, except the respective hamlets of Gosford and Water Eaton; the hamlet of Old Woodstock and Blenheim Park.

29. COUNTY OF SALOP.

NORTHERN DIVISION.

Shrewsbury.—From the point at which the river Severn is joined by a stream or watercourse which flows by the Dog Kennel, and under Bow bridge, along the said stream or watercourse to the point at which the same reaches the road leading from Old Heath into the Chester road; thence along the said road from Old Heath to the point at which the same

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joins the Chester road; thence along the Chester road to the point at which the same is met by a watercourse which runs round the Corporation Gardens and Round Hill, and joins the River Severn near the house called "The Flash;" thence along the last-mentioned watercourse to the point at which the same reaches the old Baschurch road; thence along the old Baschurch road to the point at which the same is met by a footpath leading along the wall of Flash House towards the river Severn; thence along the said footpath to the point at which the same meets again the last-mentioned watercourse; thence along the last-mentioned watercourse to the point at which the same joins the river Severn; thence along the river Severn to the point at which the same is met by the common boundary of the respective parishes of Saint Chad and Saint Julian; thence, eastward, along the boundary of the parish of Saint Chad, to the point at which the same reaches a lane or road which leads from the Montgomery road into lands belonging to Mrs. Cartwright; thence along such lane or road to the point at which the same joins the Montgomery road; thence in a straight line to the point at which the stream from the Conduit Head joins the Radbrook stream; thence along the Radbrook stream to the point at which the same reaches Kingsland Lane; thence along Kingsland Lane to the point at which the same joins the Bishop's Castle road; thence along the Bishop's Castle road to the point at which the same is met by the boundary of the parish of Saint Julian; thence, eastward, along the boundary of the parish of Saint Julian to the point at which the same meets the boundary of the parish of Holy Cross; thence, eastward, along the boundary of the parish of Holy Cross to the point first described.

SOUTHERN DIVISION.

Bridgnorth.—The old borough of Bridgenorth, and the several parishes of Quatford, Oldbury, Tasley, and Astley Abbotts.

Ludlow.—From the point on the south of the town at which Dirty Brook joins the river Teme, north-eastward, along the boundary of the township of Ludford to that point thereof which is nearest to the south-western corner of the piece of land called Rock Close; thence in a straight line to the said south-western corner; thence along the western fence of Rock Close to the point at which the same cuts the road to the Sheet; thence towards Ludlow along the road to the Sheet to the point at which the same is joined by a road leading by Gallows Bank into Rock Lane; thence along the last-mentioned road to the point at which the same reaches Rock Lane; thence along Rock Lane to the point at which the same is joined by a road to the Sandpits Turnpike; thence along the said road to the Sandpits Turnpike to the

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point at which the same is met by the eastern fence of the garden of the public house called the Cross Keys; thence in a straight line to the point at which Fishmore Brook would be cut by a straight line to be drawn from the point last described to Stanton Lacy House; thence along the Fishmore Brook to the point at which the same joins the river Corve; thence up the river Corve to the point at which the same meets the fence which separates the lands occupied by Mr. William Russell from the lands occupied by Mr. Henry Lloyd; thence along the last-mentioned fence to the point at which the same meets the Shrewsbury Road; thence along the fence which separates the two fields respectively called the Lease Piece and Pike Field to the point at which such fence meets the Burway Road; thence, northward, along the Burway Road to the point at which the same is met by the fence which separates the two fields respectively called "the marshes" and "the ox pasture;" thence along the last-mentioned fence to the point at which the same meets the river Teme; thence in a straight line to the point at which the fence which divides the lands of the Honourable Robert Henry Clive from lands of the corporation of Ludlow, in the occupation of Mr. William Smith, meets the Prior Halton Road; thence towards Ludlow along the Prior Halton Road to the point at which the same is met by the fence which divides the lands of the corporation of Ludlow, occupied by the late Mr. Johnnes and Mr. George Anderson, from lands of the said corporation occupied by the late Mr. Anthony Jones and Mr. Robert Meyrick; thence along the last-mentioned fence to the point at which the same meets the Brick House Road; thence in a straight line to the eastern corner of Whitecliff Coppice; thence, southward, along the north-eastern fence of Whitecliff Coppice to the point at which the same meets the boundary of the township of Ludford; thence, southward, along the boundary of the township of Ludford to the point first described.

Wenlock. The old borough of Wenlock.

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30. COUNTY OF SOMERSET.

EASTERN DIVISION.

Bath.—The old city of Bath, the respective parishes of Bathwick and Lyncomb and Wyncomb, and also that part of the parish of Walcot which lies without the old city of Bath, and adjoins the boundary of the old city of Bath.

Bristol.—From the point on the north-east of the city at which the eastern boundary of the out-parish of Saint Paul meets the north-western boundary of the out-parish of Saint Philip and Jacob, eastward, along the boundary of the parish

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of Saint Philip and Jacob to that point thereof which is nearest to the point at which the Wells road leaves the Bath road; thence in a straight line to the said point at which the Wells road leaves the Bath road; thence along the Wells road to the Knowle Turnpike Gate; thence along the road which leads from the Knowle Turnpike Gate to Bedminster church to the point at which the same is crossed by Bedminster brook; thence along Bedminster brook to the point at which the same crosses the road from Lock's mill to Bedminster; thence along the last-mentioned road, passing the southern extremity of the village of Bedminster, to the point at which the same meets the brook at Marsh Pit; thence along the last-mentioned brook to the point at which the same meets the boundary of the parish of Clifton; thence, northward, along the boundary of the parish of Clifton to the boundary stone marked (C. P.) and (W. P.) (12), marking the north-eastern angle of the boundary of the parish of Clifton, and situate on Durdham Down, east of the Shirehampton road; thence in a straight line to the southernmost point at which the boundary of the tithing of Stoke Bishop meets Parry's Lane; thence, eastward, along the boundary of the tithing of Stoke Bishop to the point at which the same joins the boundary of the out-parish of Saint Paul; thence, northward, along the boundary of the out-parish of Saint Paul to the point first described.

Frome.—From Cottle's Oak Turnpike Gate, along Barton Lane, to the point at which the same meets Green Lane; thence along Green Lane to the point at which the same meets the lane to Hellicar's Grave; thence along the lane to Hellicar's Grave to the southern extremity thereof; thence in a straight line through Plaguy House into Grove Lane; thence in a straight line to the point at which the road from Tytherington is met by the lane to Adderwell at a place called the Mount; thence along the lane to Adderwell to the eastern extremity thereof near Bellows Hole; thence in a straight line to the point at which Frome River would be cut by a straight line to be drawn from the point last described to the house called "Mrs. White's," or "Southfield Farmhouse;" thence, northward, along Frome River to the point at which the same is joined by Rodden Lake Streamlet; thence along Rodden Lake Streamlet to Rodden Bridge at the end of Rodden Lane; thence along Rodden Lane to the point called Clink Crossways; thence in a straight line to the twelfth milestone on the Bath Road; thence in a straight line to the north-eastern corner of Mr. Shepherd's garden wall; thence in a straight line, through the house of Thomas Ball and Mrs. Slade, to Frome River; thence along Frome River to the northernmost part of the buildings of the dyehouse, late the property of Samuel Button; thence in a straight line to the centre of Kissing Batch Pound; thence in a straight line to Cottle's Oak Turnpike Gate.

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Wells.—From the point on the north-east of the city at which the old city boundary meets Back Lane, along Back Lane to the point at which the same joins the Bath road; thence in a straight line across the Bath road to the northern extremity of Drang Lane; thence along Drang Lane, and along the footpath across Drang meadow, to the point at which such footpath joins the road which leads to the turnpike on the Shepton Mallett road; thence, westward, along the road so joined to the next city boundary stone; thence, southward, along the old city boundary to the point first described.

WESTERN DIVISION.

Bridgewater.—From the easternmost point at which the boundary of Three Elm Field meets the river Parrett, westward, along the boundary of Three Elm Field to the point at which the same meets Reed Moor Pill; thence, westward, along Reed Moor Pill to the point at which the same reaches the southern boundary of the two fields respectively called the "Pasture Ground;" thence in a straight line to the point at which the boundary of the parish of Wembdon would be cut by a straight line to be drawn from the point last described to the spire of Bridgewater church; thence, southward, along the boundary of the parish of Wembdon to the point at which the same meets the Cannington road; thence, westward, along the Cannington road to the point at which the same is met by the boundary of the field called Six Acres; thence, westward, along the boundary of the field called Six Acres to the point at which the same meets, near the Horse and Jockey Inn, the road from West Street; thence, westward, along the said road from West Street to the point at which the same is met by the western boundary of Matthew's Field; thence along the western boundary of Matthew's Field to the point at which the same meets the Town Mill Leat; thence along the Town Mill Leat to the point at which the same reaches the south-eastern corner of Matthew's Field; thence in a straight line to the point at which Hamp Brook meets Hamp Lane; thence along Hamp Lane to the point at which the same joins West Road; thence along West Road to the point at which the same is joined by Row's Lane; thence along Row's Lane to the point at which the same meets the fence which incloses the grounds of the house called "Hamp," belonging to John Chapman, Esquire; thence, southward, along the last-mentioned fence to the point at which the same meets a stream at Barland Lane Bridge; thence along the said stream to the point at which the same falls into the river Parrett at Barland Clize; thence, westward, along the river Parrett to the point at which the same is joined by the boundary of the northernmost of the two contiguous fields respectively called Five Acres; thence, eastward, along the boundary of the last-

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mentioned field to the point at which the same meets the boundary of the field called Four Acres; thence, northward, along the boundary of the field called Four Acres to the point at which the same meets the boundary of a field called Five Acres; thence, eastward, along the boundary of the last-mentioned field called Five Acres to the point at which the same meets the Weston Zoyland road; thence, eastward, along the Weston Zoyland road to the point at which the same is met by an occupation road leading towards the north; thence along the said occupation road to the northern extremity thereof; thence along the fence which is the western boundary of the fields respectively called Ten Acres, Seven Acres, and Five Acres, formerly belonging to Alexander Popham, Esq., to the point at which such fence meets the fence of a field called The Hundred Acres; thence in a straight line to the southern extremity, close by a penfold, of the fence which divides the two fields respectively called "Part of the Hundred Acres;" thence, eastward, along the boundary of the easternmost of the two last-mentioned fields to the point at which such boundary meets the Bath road; thence, northward, along the boundary of the field called Small Croft, to the point at which the same meets the Bristol road; thence, westward, along the boundary of Great Castle Field to the point at which the same meets the river Parrett; thence along the river Parrett to the point first described.

Taunton.—From the point on the north-west of the town at which Mill Lease Stream crosses Greenway Lane, along Greenway Lane to the point at which the same joins the Kingston road; thence along the Kingston road to the point at which the same is joined by the Cheddon road; thence along the Cheddon road to the point at which the same is joined by Prior's Wood Lane; thence along Prior's Wood Lane to the point at which the same is met by the Obridge stream; thence along the Obridge stream to the point at which the same falls into the river Tone; thence, southward, along the river Tone to the point at which the same is met by Mill Lane; thence along Mill Lane to the point at which the same joins the Bridgewater road; thence along the Bridgewater road to the point at which the same is joined by Bath Pool Lane; thence in a straight line to Stream Plat Bridge; thence along the stream over which Stream Plat Bridge is built, through Holway Bridge, to the point at which the same stream meets the boundary of the parish of Wilton at Cuckoo Corner; thence, westward, along the boundary of the parish of Wilton to the point at which the same meets Sherford stream; thence along Sherford stream to the point at which the same meets Sherford Lane; thence along Sherford Lane to the point at which the same joins the Honiton road; thence along the Honiton road to the point at which the same is joined by

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Hoverland Lane; thence along Hoverland Lane to the point at which the same meets Ganton stream; thence along Ganton stream to the point at which the same meets the boundary of the parish of Wilton; thence, northward, along the boundary of the parish of Wilton to the point at which the same meets the Bishops Hull road; thence, northward, along the Bishops Hull road to the point at which the same is joined by Long Run Lane; thence in a straight line to the turnpike house on the Staplegrove road; thence along the Staplegrove road to the point at which the same is crossed by Mill Lease stream; thence along Mill Lease stream to the point first described.

31.—COUNTY OF STAFFORD.

NORTHERN DIVISION.

Newcastle-under-Lyme.—The old borough of Newcastle-under-Lyme, and the portion of the parish of Stoke-upon-Trent which is surrounded partly by the boundary of the old borough of Newcastle-under-Lyme and partly by the boundary of the township of Knutton.

Stafford.—From the point at which the boundary of the old borough is cut by a straight line drawn from the windmill near the bridge on the Doxey road to the stile at the southern end of the footpath from the Newport road into the Penkridge road, along the said straight line to the point at which the same meets the Penkridge road; thence, southward, along the Penkridge road to the point at which a stream of water running along the eastern side of that road turns eastward therefrom; thence along the said stream to the point at which the same meets Spittal brook; thence along Spittal brook to the point at which the same meets the river Sow; thence along the river Sow to the point at which the same meets the boundary of the old borough; thence, northward, along the boundary of the old borough to the point first described.

Stoke-upon-Trent.—The several townships of Penkull-with-Boothen, Tunstall, Burslem, Hanley, Shetlon, Fenton Vivian, Lane End, Fenton Culvert, and Longton, the vill of Rushton Grange, and the hamlet of Sneyd.

SOUTHERN DIVISION.

Lichfield.—The county of the city of Lichfield, and the place called The Close, which is encompassed by the said county.

Tamworth.—The parish of Tamworth.

Walsall.—The parish of Walsall, except that detached part thereof which is surrounded by the respective parishes of Aldridge and Rushall, and the chapelry of Pelshall.

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Wolverhampton.—The several townships of Wolverhampton, Bilston, Willenhall, and Wednesfield, and the parish of Sedgeley.

32.—COUNTY OF SUFFOLK.

EASTERN DIVISION.

Ipswich.—The old borough of Ipswich.

WESTERN DIVISION.

Bury St. Edmund's.—The old borough of Bury St. Edmund's.

Eye.—The several parishes of Eye, Hoxne, Denham, Redlingfield, Occold, Thorndon, Braisworth, Yaxley, Thrandiston, Broome, and Oakley.

Sudbury.—The old borough of Sudbury, and the township or hamlet of Ballingdon-cum-Brunden; together with all or any extra-parochial places or place surrounded by the boundaries either of the old borough of Sudbury, or of the township or hamlet of Ballingdon-cum-Brunden.

33.—COUNTY OF SURREY.

EASTERN DIVISION.

Lambeth.—The parish of Saint Mary Newington, the parish of Saint Giles, Camberwell, except the manor and hamlet of Dulwich, and also such part of the parish of Lambeth as is situate to the north of the line hereinafter described, including the extra-parochial space encompassed by such part.

From the point at which the road from London to Dulwich by Red Post Hill leaves the road from London over Herne Hill in a straight line to Saint Matthew's Church at Brixton; thence in a straight line to a point in the boundary between the respective parishes of Lambeth and Clapham one hundred and fifty yards south of the middle of the carriageway along Acre Lane.

Reigate.—The parish of Reigate.

Southwark.—The old borough of Southwark, including the Mint and manor of Suffolk; the several parishes of Rotherhithe, Bermondsey, and Christ Church and the Clink Liberty of the parish of Saint Saviour.

WESTERN DIVISION.

Guildford.—From the point on the north of the town at which a creek leading from Dapdune House joins the river

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Wey, in a straight line to the point at which the road called the New road joins the Stoke road; thence along the New road to the point at which the same joins the Kingston road; thence along the Kingston road to the point at which the same joins Cross Lane; thence along Cross Lane to the point at which the same joins the Epsom road; thence in a straight line to the point in Chalky Lane at which the boundary of Trinity parish leaves the same; thence along the southern boundary of Trinity parish to the point at which such boundary enters Gaol Lane; thence in a straight line to the point at which the river Wey turns abruptly to the north at a wharf close by the Horsham road; thence in a straight line to the point at which the path from Guildford across Bury Fields abuts on the Portsmouth road; thence in a straight line to the south-western corner of Cradle Field; thence along the western hedge of Cradle Field to the point at which the same cuts the old Farnham road; thence in a straight line towards Worplesdon Semaphore to the point at which such line cuts the new Farnham road; thence in a straight line to the point first described.

34.—COUNTY OF SUSSEX.

EASTERN DIVISION.

Brighthelmstone.—The respective parishes of Brighthelmstone and Hove.

Hastings.—The town and port of Hastings and its liberties, including that detached part of the parish of Saint Leonard which lies near the town of Winchelsea, and including also the liberty of the Sluice, but excluding all such other parts of the old borough of Hastings as are detached from the main body thereof.

Lewes.—From the town mill on the north-western side of the town, in a straight line to the Smock Windmill, which is the most southerly of the two windmills called "The Kingstone Mills;" thence in a straight line to the point at which the boundary of the parish of Southover crosses the Cockshut stream; thence along the Cockshut stream to the point at which the same joins the river Ouse; thence along the river Ouse to the point at which the same would be cut by a straight line to be drawn from the point last described to the point on the eastern cliff known as the site of an old windmill; thence in a straight line to the said point on the eastern cliff; thence in a straight line to the windmill called "Malling Mill;" thence in a straight line to the point at which the stream which turns the paper-mill falls into the river Ouse; thence in a straight line to the town mill.

Rye.—The ancient towns of Rye and Winchelsea, the seve-

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ral parishes of Rye, Peasemarsh, Iden, Playden, Winchelsea, East Guildford, Icklesham, and Udimer, and also that part of the parish of Brede which lies between the parishes of Udimer and Icklesham.

WESTERN DIVISION.

Arundel.—The parish of Arundel.

Chichester.—From the eastern extremity of the boundary of the old city liberty at St. James's Post, northward, along the said boundary to the point at which the same meets the old Broill road; thence in a straight line to the westernmost point at which the boundary of the parish of St. Peter the Great meets the boundary of the parish of Saint Bartholomew; thence, southward, along the boundary of the parish of Saint Bartholomew to the point at which the same crosses the new road to Fishbourn; thence in a straight line to the turnpike gate on the Stockbridge road; thence in a straight line to the canal bridge adjoining the basin; thence in a straight line to the southern extremity of Snag Lane; thence in a straight line to the southern extremity of Cherry Orchard Lane; thence in a straight line to the point at which the Rumboldsweek road meets the Oving road; thence in a straight line to the point first described.

Horsham.—The parish of Horsham.

Midhurst—The several parishes of Midhurst, Easebourn, Heyshot, Chithurst, Graffham, Didling, and Cocking; and the tithing of South Ambersham in the parish of Steep; that part of the parish of Bignor which is surrounded by the parish of Easebourne; those parts of the several parishes of Wool Lavington, Bepton, and Woolbeding which adjoin the parish of Midhurst; that part of the parish of Lynch which adjoins the said part of the parish of Bepton; and also that part of the parish of Lynch in which Woodman's Green is situate; all such parts of the respective parishes of Stedham and Iping as are not situated to the north of the cross road which runs from Woodman's Green, between North End Farm and Hobbert's Farm, to Milland Marsh; the parish of Trotton, except that part thereof which lies to the north of the cross road from Vining Common to Home Hill and Cobed Hall called Lonebeech Lane; and all such parts of the respective parishes of Selham and Lodsworth, and of the tithing of North Ambersham, as are not situated to the north of the brook which runs from Cook's Bridge on the London road to Lickfold Bridge.

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35.—COUNTY OF WARWICK.

NORTHERN DIVISION.

Birmingham.—The respective parishes of Birmingham and Edgbaston, and the several townships of Bordesley, Duddeston and Nechels, and Deritend.

Coventry.—The city of Coventry and the suburbs thereof.

SOUTHERN DIVISION.

Warwick.—The old borough of Warwick.

36.—COUNTY OF WESTMORELAND.

Kendal.—The respective townships of Kendal and Kirkland, and all such parts of the township of Nether Graveship as adjoin the township of Kendal.

37.—ISLE OF WIGHT.

Newport.—From the point on the south of the town at which the footpath to Shide joins the Niton road at Trattles Butt, in a straight line to the house in the parish of Carisbrooke which belongs to Joshua Spickernell, and is now in the occupation of Mrs. Stanborough; thence in a straight line across the Gatcombe road to the house which belongs to James Barlow Hoy, Esquire, and is now in the occupation of James Dennett; thence in a straight line in the direction of West Mill to the point in which such straight line cuts the Lukely or Carisbrooke stream; thence, northward, along the Lukely or Carisbrooke stream to the point at which the same meets the boundary of the old borough; thence, northward, along the boundary of the whole borough to Pan Bridge; thence in a straight line to the point at which the footpath to Shide meets Church Litton Lane; thence along the said footpath to the point first described.

38.—COUNTY OF WILTS.

NORTHERN DIVISION.

Calne.—The parish of Calne, and also those parts of the respective parishes of Blackland and Calstone Willington which are surrounded by the parish of Calne, including all such parts, if any, of the old borough of Calne as are without the parish of Calne.

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Chippenham.—The several parishes of Chippenham, Hardenhuish, and Langley Burrell, and the extra-parochial space called Pewisham.

Devizes.—The old borough of Devizes, including the respective parishes of St. John the Baptist and the Blessed Virgin Mary, and also so much of the chapelry of St. James and of the parish of Rowde as lies between the boundary of the old borough and the following boundary; (that is to say),

From the point at which the boundary of the parish of St. John the Baptist would be cut by a straight line to be drawn from the Dairy Farm House on the Chippenham road, called Ox House, to the round tower of the new County Bridewell, in a straight line to Ox House; thence in a straight line to a house occupied by Mr. Mayo, called Brow Cottage; thence in a straight line to the point at which the towing path of the Kennet canal meets Dye House Lane; thence eastward along the Kennet canal to the point at which the same turns northward near London Bridge; thence in a straight line drawn due east to a point one hundred yards distant; thence in a straight line to Mr. Gundry's house on the Salisbury road; thence in a straight line to a house called Southgate, occupied by Mr. Slade; thence in a straight line to the southernmost point at which Gallows Acre Lane is met by the boundary of the parish of St. John the Baptist.

Malmsbury.—The old borough of Malmsbury, the respective out-parishes of St. Paul Malmsbury and St. Mary Westport, and the several parishes of Brokenborough, Charlton, Garsdon, Lea, Great Somerford, Little Somerford, Foxley, and Bremhilham.

Marlborough.—The old borough of Marlborough and the parish of Preshute.

SOUTHERN DIVISION.

Salisbury.—From the south-western extremity of the wall of the Poorhouse at Fisherton Anger, in a straight line to a point in the Wilton road, which is three hundred and thirty yards distant from the point at which the Wilton road joins the Devizes road; thence in a straight line to a point in the Devizes road, which is six hundred and forty yards distant from the point at which the Wilton road joins the Devizes road; thence in a straight line to the point at which the Stratford road joins the Marlborough road; thence in a straight line to the point called Whipping Cross Tree; thence in a straight line to the point at which the road from Salisbury to Laverstock joins the road from Salisbury to Clarendon; thence in a straight line to the point at which the eastern boundary of the city meets the river Avon; thence along the river Avon to the point at which the same joins

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the river Nadder; thence along the river Nadder to the point first described*.

Westbury.—The parish of Westbury.

Wilton.—The several parishes of Wilton, Fugglestone, Stratford-under-the-Castle, Great Durnford, Woodford, South Newton, Wishford, Barford, Burcombe, Netherhampton, West Harnham, and Britford; such part of the parish of Fisherton Anger as will not by the provisions of this Act be included within the boundary of the city of Salisbury; and also all such parts of the several parishes of Bishopston, Toney Stratford, Combe Bisset, and Humington as are situated to the north of a straight line to be drawn from Odstock church to the point on Combe Hill at which a fence dividing the Down from the cultivated land meets the old road from Salisbury to Blandford, and thence through the centre of the clump of trees called Fallstone Middle Nursery to the western boundary of the parish of Bishopston; together with all such part of the extra-parochial place called Grovely Wood as is situate to the east of a straight line to be drawn from the point at which the western boundary of the parish of Wishford meets the northern boundary of Grovely Wood, to the point at which the western boundary of the parish of Barford meets the southern boundary of Grovely Wood.

39.—COUNTY OF WORCESTER.

EASTERN DIVISION.

Droitwich.—The old borough of Droitwich; the several parishes of Dodderhill, Hampton Lovett, Doverdale, Salwarp, Martin Hussingtree, Oddingley, Hadsor, Hindlip, Himbleton, and Elmbridge; the Moreway-end division and the Broughton division of the parish of Hanbury; the extra-parochial places called Crutch and Westwood Park; together with the two parts of the respective parishes of Claines and Warndon which are surrounded by the respective parishes of Hindlip and Martin Hussingtree; and also the extra-parochial place called Shell, and the detached part of the parish of Inkberrow, which are respectively contained between the parish of Himbleton and the Broughton division of the parish of Hanbury.

Dudley.—The parish of Dudley.

Evesham.—The old borough of Evesham.

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* See *Reg.* v. *Inhabitants of New Sarum*, 7 Q. B. 941, ante, p. 216.

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WESTERN DIVISION.

Bewdley.—The parish of Ribbesford, and the several hamlets of Wribbenhall, Hoarstone, Blackstone, Netherton, and Lower Mitton with Lickhill.

Kidderminster.—From the point at or near Proud Cross at which the boundary of the old borough meets the Broomfield road, along the boundary of the old borough, to the point at which the Abberley road meets the Black Brook; thence, westward, along the Abberley road to the first point at which the same is met by a hedge running due south therefrom; thence along the said hedge to its southern extremity near a stone quarry; thence in a straight line to the said stone quarry; thence in a straight line to the first mile stone on the Bewdley road; thence, westward, along the Bewdley road to the point at which the same is joined by a footpath leading to the Stourport road; thence along the said footpath to the point at which the same meets the boundary of the old borough; thence, southward, along the boundary of the old borough to the point at which the same meets the south-eastern fence of a wood called "the Copse," situated on the eastern bank of the river Stour; thence along the said fence to the point at which the same meets Hoo Lane; thence across Hoo Lane, over a style called "Gallows Stile," along a footpath leading from the said stile to the lane from Hoo Brook to Comberton Hill, to the point at which the last-mentioned footpath meets the lane from Hoo Brook to Comberton Hill; thence, northward, along the lane from Hoo Brook to Comberton Hill to the point at which the same meets the boundary of the old borough; thence, northward, along the boundary of the old borough to the point first described.

Worcester.—From the Liberty Post on the Tewkesbury road, southward, along the Tewkesbury road, to the point beyond the turnpike at which the same road is met by Duck Brook; thence along Duck Brook to the point at which the same crosses the London road; thence in a straight line to the western extremity of the road which leads out of the London road to Lark Hill; thence along the said road to Lark Hill to the eastern extremity thereof; thence along a footpath leading to the New Town road to the point at which the same reaches the New Town road; thence, westward, along the New Town road to the point at which the same is crossed by a footpath leading from the House of Industry to the Porte Fields road; thence along the last-mentioned footpath to the point at which the same joins the Porte Fields road; thence along a footpath which leads from the Porte Fields road, past Rainbow Villa, into the Astwood road, to the point at which such footpath joins the Astwood road; thence along a road which leads from the Astwood road to the Whey Tavern to the point at which such road crosses

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the Worcester and Birmingham canal; thence along the Worcester and Birmingham canal to the bridge which is nearest to Gregory's mill; thence along the road leading from the said bridge to the Birmingham road to the point at which the same is crossed by the Barborne brook; thence along the Barborne brook to the point at which the same falls into the river Severn; thence along the river Severn to the point at which the same is met by the boundary of the parish of St. Clement; thence, westward, along the boundary of the parish of St. Clement to the point at which the same meets the boundary of the township of St. John; thence, westward, along the boundary of the township of St. John to the point at which the same meets the Hereford road; thence along the Hereford road to the point at which the same is met by Powick Lane, leading to Powick bridge; thence, southward, along Powick Lane to the point at which the same terminates in a footpath; thence in a straight line to the point at which Cut Throat Lane is met by a footpath leading from Boughton Fields to the Malvern road; thence along the last-mentioned footpath to the point at which the same joins the Malvern road; thence, northward, along the Malvern road to the point at which the same meets the boundary of the township of St. John; thence, eastward, along the boundary of the township of St. John to the point at which the same meets the boundary of the parish of St. Clement; thence, eastward, along the boundary of the parish of St. Clement to the point at which the same meets the river Severn; thence, southward, along the river Severn to the point at which the same is met by the old city boundary; thence, southward, along the old city boundary to the Liberty Post aforesaid.

40.—COUNTY OF YORK.

NORTH RIDING.

Malton.—The respective parishes of St. Leonard and St. Michael, New Malton, the parish of Old Malton, and the parish of Norton.

Northallerton.—The respective townships of Northallerton and Romanby, and the chapelry of Brompton.

Richmond.—The respective parishes of Richmond and Easby.

Scarborough.—The parish of Scarborough, together with the extra-parochial precinct of Scarborough Castle.

Thirsk.—The several townships of Thirsk, Sowerby, Carlton, Miniott, Sand Hutton, Bagby, and South Kilvington.

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Whitby.—The several townships of Whitby, Ruswarp, and Hawsker-cum-Stainsacre.

York.—From the ancient barn on the Easingwold road, two hundred yards beyond the first mile stone on that road, in a straight line to the Lady or Clifton Mill; thence in a straight line to the pepper or stray mill; thence in a straight line to the point at which the Stockton road would be cut by a straight line to be drawn thereto from the pepper or stray mill through the new manor house; thence along the Stockton road to the point at which the same is joined by a lane leading from the eastern extremity of the village of Heworth towards the north; thence in a straight line to the point at which the Tang Hall Beck would be cut by a straight line to be drawn from the point last described to Heslington Mill; thence along Tang Hall Beck to the point at which the same crosses the boundary of the county of the city of York; thence, southward, along the boundary of the county of the city of York to the point at which the same would be cut by a straight line to be drawn thereto from the south-eastern corner of the barracks through Lamel Mill; thence in a straight lane to the south-eastern corner of the barracks; thence along the southern wall of the barracks to the point at which the same cuts the Selby road; thence along the Selby road to the point at which the same is joined by Fulford Church Lane; thence along the northern hedge of Fulford Church Lane to the point at which the same ceases to be continuous, close by a farm building belonging to Mr. Ellis; thence in a straight line, in the direction of the said hedge, to the river Ouse; thence along the river Ouse to the southernmost point at which the same is met by the boundary of the city liberty; thence, westward, along the boundary of the city liberty to the point at which the same again meets the river Ouse; thence along the river Ouse to the point at which the same would be cut by a straight line to be drawn from the barn first described to Acomb Church; thence in a straight line to the barn first described.

EAST RIDING.

Beverley.—The several parishes of St. Mary, St. Martin, and St. Nicholas, and also such part of the parish of St. John as is comprised within the liberties of Beverley.

Kingston-upon-Hull.—The several parishes of St. Mary, the Holy Trinity, Sculcoates, and Drypool; together with the extra-parochial space called Garrisonside, and all other extra-parochial places, if any, which are surrounded by the boundaries of the said parishes of St. Mary, the Holy Trinity, Sculcoates, and Drypool, or any or either of them; and also all such part of the parish of Sutton as is situated to the south of a straight line to be drawn from Sculcoates Church to the point at which the Sutton drain meets the Summergangs drain.

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WEST RIDING.

Bradford.—The several townships of Bradford and Manningham and Bowling, and the township of Horton, including the hamlets of Great and Little Horton.

Halifax.—From the point on the north of the town at which the respective boundaries of the several townships of Halifax, North Owram, and Ovenden meet, westward, along the boundary of the township of Halifax, to the point at which the same meets the road leading from a house called Shay to Bank Top; thence along the said road from Shay to Bank Top, to the point at which the same meets the road leading from South Owram to North Owram; thence along the said road from South Owram to North Owram to God Lane Bridge; thence in a straight line to the south-eastern corner of New Town on the Bradford road; thence in a straight line to the point first described.

Huddersfield.—The township of Huddersfield.

Knaresborough.—The boundary described in the second section of an Act passed in the fourth year of the reign of his late Majesty King George the Fourth, and intituled "An Act for paving, lighting, watching, cleansing, and improving the Town of Knaresborough in the West Riding of the County of York, and that Part of the Township of Scriven-with-Tentergate which adjoins the said Town, and is called Tentergate."

Leeds.—The parish of Leeds.

Pontefract.—The old borough and township of Pontefract, and the extra-parochial space called the Pontefract Park district, the castle precincts, and also the several townships of Tanshelf, Monkhill, Knottingley, Ferrybridge, and Carleton.

Ripon.—The township of Ripon; and also such part of the township of Aismunderby-cum-Bondgate as is situate to the north of the point on the south of the town of Ripon, at which the Ripley road meets the Littlethorpe road, and which is the southern extremity of the nearly disjointed portion of the township of Aismunderby-cum-Bondgate.

Sheffield.—The parish of Sheffield.

Wakefield.—From the southernmost point at which the boundary of the township of Wakefield leaves the river Calder, along the boundary of the township of Wakefield, to the point at which the same is intersected by a hedge running nearly north close by the western side of Park Gate Farm; thence in a straight line to the point at which the footpath leading to St. Swithin's Well joins the footpath from East Moor to Old Park; thence in a straight line to the point at which the Stanley road would be cut by a straight line to be drawn from the point last described to the cupola of the Lunatic Asylum; thence along the Stanley road to the point at

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which the same is met by the East Moor road; thence along the East Moor road to the point at which the same meets the boundary of the township of Wakefield; thence, westward, along the boundary of the township of Wakefield to the point at which the same meets the boundary of the detached portion of the township of Alverthorp which lies north of the township of Wakefield; thence, westward, along the boundary of the said detached portion of the township of Alverthorp to the point at which the same joins again the boundary of the township of Wakefield; thence, southward, along the boundary of the township of Wakefield to the point at which the same meets Balne Lane; thence along Balne Lane to the point at which the same is met by Humble Jumble Lane; thence along Humble Jumble Lane to the point at which the same meets the footpath to Flanshaw Lane; thence along the footpath to Flanshaw Lane to the point at which the same meets Smithson's railroad; thence along Smithson's railroad to the point at which the same meets the Dewsbury road; thence along the Dewsbury road to the point at which the same meets the New or Occupation road which unites the Dewsbury and Horbury roads; thence along the said New road to the point at which the same meets the park wall of Thorne's House; thence, northward, along the said wall to the point at which the same meets the road from Thornes to Horbury; thence along the road from Thornes to Horbury to the point at which the same meets the stream called "the Gilsike;" thence along the said stream to the point at which the same falls into the river Calder; thence along the river Calder to the point first described.

WALES.

41.—COUNTY OF ANGLESEA.

BEAUMARIS DISTRICT.

Amlwch.—From the point on the north-east of the town at which Rhyd Talog brook falls into the sea at Porth Aber Cawell, southward, along the boundary of the parish of Almwch to the point called Croes Eilian; thence along the Plas Dulas road to the point called Penllaethdy Mawr; thence along the road leading to Pentre Felin, across the Llaneroh-y-medd road, to the point called Pentre Felin Adda cross roads; thence along a road towards Pary's farm to the point at which the same is met by the first bye-road on the right leading to Bodgadfa farm; thence along the said bye-road, passing Bodgadfa farm to the point at which the same bye-road is crossed

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(between Bod-gadfa farm and a cottage called Yr-hen Odyn) by the Lastre brook; thence along the Lastre brook, crossing the Holyhead road, to the point at which the same brook falls into the river called Afon Park Llechog; thence along the Afon Park Llechog to a ford in the Cemmaes road called Rhyd-carreg-cath: thence along the Cemmaes road to the cottage called Bryn-y-Cyll, at which the same road is met by the church pathway; thence along the church pathway to the stile over a brook which divides the land of the Marquis of Anglesea from the Coed Helen and Lysdulas property, and which stile is close to a spring called Ffynnon Casyria; thence along the last-mentioned brook to the point at which the same is met by a boundary fence (a few yards north of a cottage called Cae-bach) running in the direction of Mona Mill; thence along the said fence to the point at which the same cuts the Porth Llechog road; thence, towards Amlwch, along the Porth Llechog road to the point at which the same is met by the Ffynnon-y-Garreg-fawr pathway; thence along the Ffynnon-y-Garreg-fawr pathway to the spring called Ffynnon-y-Garreg-fawr; thence along the stream which proceeds from the said spring to the point at which the same stream falls into the sea; thence along the sea to the point first described.

Beaumaris.—The old borough of Beaumaris.

Holyhead.—From that part of the common called "The Towyn," on the south-east of the town, which is nearest to Holyhead common, along the road leading to Penrhos which adjoins the Towyn, (and is to the east of a cottage called "Pen-Towyn," occupied by John Davis,) to the point at which the said road to Penrhos is met by another road leading to a piece of waste land called "The Cyttir;" thence along the said road to the Cyttir to the point at which the same meets the road which leads across the Cyttir; thence along the said road across the Cyttir to the point at which the same meets the old post road to Bangor; thence along the old post road to Bangor to Pentraeth; thence along the road which leads from Pentraeth in a westerly direction, and south of the new brewery, to the point at which the same joins another road; thence, northward, along the road so joined to the point at which the same meets the Penrhos-foila road; thence along the Penrhos-foila road to the point at which the same meets the road which leads by the Ucheldre windmill to the South Stack; thence along the said road to the South Stack, including the messuage, with the offices and garden thereunto belonging, now in the occupation of Captain Colin Jones, to the westernmost point (near a cottage called "Cerrig-y-lloi") at which the same is crossed by a stream running from the Holyhead Mountain; thence along the said stream to the point at which the same falls into the sea; thence along the sea coast to that point thereof which is nearest to the point

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first described; thence in a straight line to the point first described.

Llangefni.—From the point at which the boundary wall between the property of Admiral Lloyd and the property of Owen Williams, esquire, meets the old Bangor road, east of a cottage called Min'fford, along the said boundary wall to the point at which the same reaches a spring and a footpath called Llwybyr Tregarnedd-bach; thence along a hedge which, running from the said spring and footpath, forms a continuation of the line of the said boundary wall, and runs through the land of John Hampton Lewis, esquire, to the point at which such hedge meets the river Cefni; thence, southward, along the river Cefni to the point at which the same is met by the boundary of the parish of Llangefni; thence, westward, along the boundary of the parish of Llangefni to the point at which the same meets the bye-road called Llidiart-y-Pandy; thence along the said bye-road Llidiart-y-Pandy to the spot called Croes-lon-pen-y-Nant; thence, southward, along the market road to the point at which the same joins the Rhos-y-meirch road; thence along the Rhos-y-meirch road to the first point at which the same is cut (beyond the road leading to Clai) by hedges running from each side of the road at right angles; thence along the hedge which runs from the last-mentioned point towards Pencraig to the point at which the same reaches an old quarry; thence along a hedge which proceeds from the said old quarry, and forms a continuation of the hedge last described, passing Tyn-y-coed Farm, to the point at which the same hedge cuts the Llanddyfnan road; thence along the Llanddyfnan road, towards Llanddyfnan, to the point at which the same meets the boundary of the Pencraig-fawr Farm; thence, southward, along the boundary of the Pencraig-fawr Farm to the point at which the same meets the old Bangor road; thence along the old Bangor road to the point first described.

42.—COUNTY OF BRECON.

Brecon.—The old borough of Brecon, and the extra-parochial districts of the Castle and Christ's College.

43.—COUNTY OF CAERMARTHEN.

CAERMARTHEN DISTRICT.

Caermarthen.—The old borough of Caermarthen.

Llanelly.—From the point in Wern-y-Goosy meadow on the north-west of the town at which the old course of the stream, which is the old borough boundary, makes a sharp turn, in

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a straight line to the southern extremity of the western fence of Cae Mawr Issa field; thence, northward, along the fence of the Cae Mawr Issa field to the point at which the same meets the wall which is the western boundary of Furnace Garden; thence along the said wall to the point at which the same meets Pen-y-Fai Lane; thence along Pen-y-Fai Lane to the point at which the same meets the Caermarthen road; thence in a straight line to the north-western corner of the garden of Cae Mawr Cottage, lately burnt down; thence along the fence which divides the garden of Cae Mawr cottage and the field Cae Isha from the field Cae-ycha to the point at which the same meets the fence which divides the field Cae-ycha from the field Cae-bank; thence along the last-mentioned fence to the northern corner of the field Cae-bank; thence in a straight line through the southern extremity of the north-eastern boundary of the field Cae-bank, across the tramroad, to the old borough boundary; thence, eastward, along the old borough boundary to the point first described.

44.—COUNTY OF CARDIGAN.

CARDIGAN DISTRICT.

Aberystwith.—From the outermost point of the rock Graiglais on the sea coast visible from the point next described, in a straight line to the northern extremity of the stone wall which divides the land called Pant-y-gyrn from the land called Frôn; thence along the said wall to the point at which the same meets the wall which divides the land Pant-y-gyrn from the land Frôn-uchaf; thence, eastward, along the boundary of Frôn-uchaf to the turnstile at the south-eastern corner thereof; thence in a straight line to the mill in the Tanyard near the road leading to Llanbadarn-fawr; thence in a straight line to the wooden dam just above Plas-greig; thence, southward, along the boundary of the old borough to the sea-coast; thence along the sea-coast to the point first described.

Adpar.—The old borough of Adpar, and the hamlet of Emlyn in the parish of Cennarth.

Cardigan.—The old borough of Cardigan, and also Bridgend Hamlet and Abbey Hamlet, in the parish of Saint Dogmel, in the county of Pembroke.

Lampeter.—From the point on the Creithin brook at which the northern boundary of the glebe meets the boundary of the old borough, along the northern boundary of the glebe to the point at which the same meets again the boundary of the old borough; thence, northward, along the boundary of the old borough to the point first described.

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45.—COUNTY OF CARNARVON.

CARNARVON DISTRICT.

Bangor.—From the point on the north-east of the town at which the road from the park wall of Penrhyn Castle to the Menai Straits joins the Menai Straits at the high-water mark, along the said road to the point at which the same meets the said park wall; thence, westward, along the said park wall to the entrance gate to Lime Grove; thence in a straight line across the road to the nearest point in the boundary wall immediately opposite, which bounds a field belonging to Lime Grove; thence along the said boundary wall to the point at which the river Cegin enters the grounds of —— Pennant, esquire; thence along the river Cegin to the bridge across the Shrewsbury road; thence in a straight line to a square brick seat or monument situate on a knoll in a field called Cae Pant; thence in a straight line to the nearest point of the road to Felin Esgob; thence in a straight line to the nearest point of the road to Brinniau; thence in a straight line to the point at which the road from Bangor to the Menai-bridge leaves the road from Bangor to Carnarvon; thence along the said road to the Menai-bridge, in the direction of such bridge, to the gate on the right-hand side which opens into an occupation road leading to Penrallt; thence in a straight line to the point at which the low-water mark in the Straits of Menai would be cut by a straight line to be drawn from the gate last described to the windmill called Llandegfan Mill, which is on the opposite side of the Straits; thence along the said low-water mark to the point thereof which is nearest to the point first described; thence in a straight line to the point first described.

Carnarvon.—The old borough of Carnarvon.

Conway.—The old borough of Conway.

Cricceith.—The old borough of Cricceith.

Nevin.—The old borough of Nevin.

Pwllheli.—From the south-western extremity of the boundary of the old borough on the sea-coast, along the boundary of the old borough (leaving the sea-coast) to the point at which the same is met by a small stream called "Afongoegen;" thence along the said stream to the bridge called "Sarn, or Pont-penmaen;" thence along the southern branch of the said stream to the point at which the same meets the boundary of the old borough; thence, northward, along the boundary of the old borough to the point at which the same meets a road leading from the Deneio church into the Carnarvon road; thence along the said road from Deneio church to the point at which the same is cut by the fence of a field called "Cae Fynnow," in the occupation of Hugh Williams, of Bryn

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Crin; thence along the last-mentioned fence to the point at which the same cuts an occupation road leading from Bryn Crin farmhouse into the Carnarvon road; thence along the said occupation road to the point at which the same joins the Carnarvon road; thence, northward, along the Carnarvon road to the point at which the same is met by a road on the right leading to Abereirch; thence along the said road to Abereirch to the point at which the same meets a road leading from Pwllheli to Tremadoc; thence in a straight line to the sea, at the nearest point; thence, westward, along the sea-coast to the point first described.

46.—COUNTY OF DENBIGH.

DENBIGH DISTRICT.

Denbigh.—The old borough of Denbigh.

Holt.—The old borough of Holt.

Ruthin.—The old borough of Ruthin.

Wrexham.—The respective townships of Wrexham Abbot and Wrexham Regis; and also such part of the township of Esclusam-below as is surrounded by the townships of Wrexham Abbot and Wrexham Regis, or one of them.

47.—COUNTY OF FLINT.

FLINT DISTRICT.

St. Asaph.—From the point on the north-west of the town at which the boundary of the township of Talar meets the river Elwy, westward, along the boundary of the township of Talar, to the green gate bridge over the brook Nant-y-franol; thence along the brook Nant-y-franol to the point at which the same meets the Holyhead road; thence, eastward, along the Holyhead road to the point at which the same is met by the boundary of the township of Talar; thence, eastward, along the boundary of the township of Talar to the point at which the same meets the boundary of the township of Bryn Polin; thence, southward, along the boundary of the township of Bryn Polin to the point at which the same meets the Upper Denbigh road; thence, northward, along the Upper Denbigh road to the point at which the same is met by a road or lane leading to Ysguborgoed; thence along such road or lane leading to Ysguborgoed to the point at which the same meets the river Clwyd; thence along the river Clwyd to the point at which the same is met by the southern

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boundary of the township of Cyrchynan; thence in a straight line to the point first described.

Caergwyle.—The old borough of Caergwyle.

Caerwys.—The old borough of Caerwys.

Flint.—The old borough of Flint.

Holywell—From the boundary stone on the hill Pen-y-bryn, and on the western side of the hedge (which is between the cottage occupied by William Williams and the south-eastern corner of the plantation of Richard Sankey, esquire), in a straight line to the boundary stone of the township of Holywell, which is on the eastern side of the St. Asaph road; thence in a straight line to a bridge (in the lane leading to and past Greenfield Hall) over a watercourse running into the river Dee; thence, eastward, along the said watercourse to the point at which the same meets the boundary of the township of Greenfield; thence, southward, along the boundary of the township of Greenfield to the point at which the same meets the boundary of the township of Holywell; thence along the eastern and southern or exterior boundary of the township of Holywell to the boundary stone first described.

Mold.—The township of Mold.

Overton.—The old borough of Overton.

Rhuddlan.—The old borough of Rhuddlan.

48.—COUNTY OF GLAMORGAN.

Merthyr Tydvil.—From the point on the north of Merthyr Tydvil at which the northern boundary of the hamlet of Gellydeg meets the river called the Great Taff, northward, along the Great Taff, to the point at which the same is cut by the southern fence of Cilsanos Common; thence, eastward, along the fence of Cilsanos Common to the point at which the same cuts the Brecon road; thence, southward, along the Brecon road to the point at which the same meets the Vainor road; thence, eastward, along the Vainor road to the point at which the same meets a bye-road leading to Cefn-coed-y-Cwymner; thence in a straight line to the point at which the Little Taff would be cut by a straight line to be drawn from the point last described to the southern mouth of a culvert on the eastern side of the Little Taff; thence, up the Little Taff, along the boundary of the parish of Merthyr Tydvil to the point at which the Cwm Bargoed stream is joined by a little brook from the Coli ravine; thence in a straight line to the north-eastern corner of the stone fence of Pen-dwy-cae Vawr farm; thence along the road which passes Pen-dwy-cae Vawr farmhouse to the point at which the same meets the mountain track from Dowlais to Quaker's Yard; thence,

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southward, along the said track, between the farms of Pen-dwy-cae Vach and Pen-dwy-cae Vawr, to the point at which such track meets a road running nearly due west, by a stone quarry, to Pen-y-rhw Gymra cottage; thence along the last-mentioned road to the point at which the same reaches the southern side of Pen-y-rhw Gymra cottage; thence in a straight line to the point at which the southern boundary of Troed-y-rhw farm meets the Cardiff road; thence along the southern boundary of Troed-y-rhw farm to the point at which the same meets the Great Taff; thence in a straight line to the bridge over the Cardiff canal called Pont-y-nant Maen; thence, northward, along the Cardiff canal to the point at which the same is intersected by the Cwmdu brook; thence along the Cwmdu brook to its source; thence in a straight line drawn due west to the boundary of the parish of Aberdare; thence, southward, along the boundary of the parish of Aberdare to the point at which the same meets the boundary of the hamlet of Gellydeg; thence, eastward, along the boundary of the hamlet of Gellydeg to the point first described.

CARDIFF DISTRICT.

Cardiff.—The old borough of Cardiff; and so much, if any, of either or both of the respective parishes of St. John and St. Mary as lies without the old borough.

Cowbridge.—The old borough of Cowbridge.

Llantrissent.—The old borough of Llantrissent.

SWANSEA DISTRICT.

Aberavon.—From the point on the south of the town at which the river Avon falls into the sea, northward, along the eastern boundary of the hamlet of Havod-y-Porth, to that point in a stone fence which is immediately opposite a small round pool; thence along the said stone fence to the point at which the same meets a lane or path leading to a small cottage; thence along such lane or path to the ford across a brook immediately opposite Margam chapel; thence along the road to Dyffrynucha to the point at which the same meets the railroad from the Tai-bach copper works to Michalston; thence, northward, along the said railroad to the point at which the same crosses a small stream running into the river Avon; thence along the said stream to the point at which the same falls into the river Avon; thence in a straight line to the point at which a stream which runs through the Cwm Bychan ravine falls into the river Avon; thence along the last-mentioned stream to the point at which the same meets the boundary of the parish of Baglan; thence, southward, along the boundary of the parish of Baglan to the point at which the same meets the boundary of the parish of Aberavon; thence, westward, along the boundary of the parish of

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Aberavon to the point at which the boundary of the old borough leaves the same; thence along the boundary of the old borough to the point at which the same meets the boundary of the hamlet of Havod-y-Porth; thence, southward, along the boundary of the hamlet of Havod-y-Porth to the point first described.

Kenfig.—The old borough of Kenfig.

Loughor.—The old borough of Loughor.

Neath.—From the point lowest down the river Neath at which the boundary of the old borough leaves the river Neath, along the boundary of the old borough, leaving the river Neath, to the point at which Caerfwell ditch joins the river Neath; thence along Caerfwell ditch to the point at which the same meets the lane called Heol-morfa; thence along the lane Heol-morfa to the point at which the same joins the high road to Merthyr; thence along the high road to Merthyr to the point at which the road to Pontardawey leaves the same; thence along the road to Pontardawey to the point at which the same is joined by a lane called Rheol-y-glow; thence along the lane Rheol-y-glow to the point at which the same meets a brook; thence along such brook to the point at which the same meets Rheol-wern-fraith Lane; thence along Rheol-wern-fraith Lane to the point at which the same is cut by a fence forming the north-western boundary of Cae-canddaw Field; thence along the last-mentioned fence to the point at which the same meets the brook running to Nantlyros; thence along the brook running to Nantlyros to the point at which the same joins the canal; thence along the canal to the point at which the same crosses the stream Clydach; thence along the stream Clydach to the point at which the same joins the river Neath; thence along the river Neath to the point first described.

Swansea.—From the point at which the northern boundary of the Parish of St. John is crossed by the road to Llangefelach church, northward, along the road to Llangefelach church, to the point at which the same is joined by a lane called Rheol-y-cnap; thence along the lane Rheol-y-cnap, and along a lane which is a continuation thereof, and which joins the turnpike road to Neath opposite the Llandwr Engine, to the point at which such last-mentioned lane joins the turnpike road to Neath; thence, northward, along the turnpike road to Neath to the point at which the same is joined, between the Duke's Arms public-house and a blacksmith's shop, by a road leading towards Clâs Mont Farm; thence along the last-mentioned road to the point at which the same is met, opposite the lane from Pen-lan commonly called Pen-lan Road, by a track leading to a well head; thence along the said track to the point at which the same reaches the said well head; thence along the stream which flows from the said well head to the

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point at which the said stream falls into the stream called Nant Velin; thence along the stream Nant Velin to the point at which the same crosses the road which leads from Morriston into the road from Llangefelach church to the bridge over the river Tawey; thence along the said road from Morriston to the point at which the same joins the road from Llangefelach church to the bridge over the river Tawey; thence along the last-mentioned road to the point at which the same reaches the said bridge over the river Tawey; thence, eastward, along the turnpike road to Neath to the point at which the same is met near the Star public-house by a lane which leads from the southern extremity of the parish of Llansamlet, over Cilfay Hill and by Bon-y-maen, to Llansamlet church; thence along the last-mentioned lane to the point at which the same meets the boundary of the hamlet of St. Thomas near Tregwl; thence, eastward, along the boundary of the hamlet of St. Thomas to the point at which the same meets the boundary of the town and franchise; thence, westward, along the boundary of the town and franchise, to the point at which the same meets the boundary of the parish of St. John; thence, westward, along the boundary of the parish of St. John to the point first described.

49.—COUNTY OF MONTGOMERY.

MONTGOMERY DISTRICT.

Llanfyllin.—From the southern extremity, on the north-west of the town, of the private road which leads from the Llangynog turnpike road to Bodfach Hall, along the said private road to the point at which the same is met by the boundary of the field Cae Evan Griffith; thence, northward, along the boundary of the field Cae Evan Griffith to the point at which the same meets the boundary of the field Maes Uchaf; thence, eastward, along the boundary of the field Maes Uchaf to the point at which the same meets the boundary of the field Cae-pella Bwlch-y-llan; thence, northward, along the boundary of the field Cae-pella Bwlch-y-llan to the point at which the same meets the Llangedwyn road; thence along the northern fences of the respective fields Cae Dû, Cae Main, and Cae Dû Mawr, and along the eastern fence of the field Cae Dû Mawr, to the point at which the last-mentioned fence reaches the Derwlwyn wood; thence in a straight line across the Derwlwyn wood to the northern extremity of the eastern fence of Glynie Isâ tenement; thence along the eastern fence of Glynie Isâ tenement to the point at which the same meets the Brynelldyn road; thence along the Brynelldyn road to the point at which the same reaches Green Hall park; thence, southward, along the boundary of the field Caer Frôn to the point at which the

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same meets the boundary of the field Caer Gwenithdir; thence, southward, along the boundary of the field Caer Gwenithdir to the point at which the same meets the river Cain; thence along the river Cain to the bridge called Pont-y-Derwlwyn; thence along Pont-y-Derwlwyn Lane to the point at which the same meets the Bachie road; thence along the Bachie road to the eastern corner of Garth wood; thence along the south-western fences of the fields Caer Garth and Cyfie Ucha, and of the wood Coed Pen-y-Garth, and, westward, along the southern fence of the field Cae Gwenith, to the point at which such southern fence cuts the occupation road to Pen-y-Garth farm; thence in a straight line to the eastern extremity of the southern fence of the field Llwyn Bricks; thence, westward, along the boundary of the field Llwyn Bricks to the point at which the same meets the fence of the field Cae Bath; thence, westward, along the fence of the field Cae Bath to the point at which the same meets the brook Abel; thence along the brook Abel to the point at which the same is met by the western fence of the easternmost of the fields respectively called Lower Meadow; thence along the western fence of the last-mentioned field to the point at which the same cuts the lane to Tynewydd; thence, northward, along the boundary of the field Llwyn Hir to the point at which the same meets the boundary of the field Cae Mawr; thence, northward, along the boundary of the field Cae Mawr to the point at which the same meets the boundary of the field Cae Bach; thence, eastward, along the boundary of the field Cae Bach to the point at which the same meets the boundary of the field Upper Coed Llan; thence eastward, along the boundary of the field Upper Coed Llan to the point at which the same meets the boundary of the field Lower Coed Llan; thence, northward, along the boundary of the field Lower Coed Llan to the point at which the same meets the occupation road to Pen Coed Llan; thence in a straight line to the point first described.

Llanidloes.—From the point on the south-east of the town at which Cwm Jonathan rill crosses the Rhaydr road, southward, along Cwm Jonathan rill, to the point at which the same is met by the hedge on the right hand which is nearest to the point at which Cwm Jonathan rill crosses the cart lane from Ty-coch to Llanidloes; thence along the said hedge to the point at which the same meets the Ty-coch stream; thence along the Ty-coch stream to the point at which the same reaches the Llangurig road; thence, northward, along the Llangurig road to the point at which the same is cut by the nearest hedge on the left hand; thence along the last-mentioned hedge to the point at which the same reaches a water-cut bank; thence, southward, along the said water-cut bank to the point at which the same reaches a hedge running in the direction of the turnpike on the Pymlymon road; thence along the last-mentioned hedge to the point at which

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the same reaches the river Severn; thence along the river Severn to the point at which the same is cut by a line drawn thereto in continuation of the direction of the hedge on the northern end of Pen-y-Green; thence along the last-mentioned line, and along the hedge in continuation whereof it is drawn, to the point at which such hedge reaches the hedge of Mr. Price's wood; thence in a straight line to the point at which the stream called Cefn Cummere Dingle meets the Pen-y-bank road; thence along the Cefn Cummere Dingle to the point at which the same joins the Clywedog river; thence, westward, along the boundary of the township of Cilmachallt, to the point at which the same meets a small watercourse which runs along the western edge of Berth Lloyd coppice; thence along the said watercourse to the point at which the same reaches the lane from Llanidloes to Gorn; thence, westward, along the lane from Llanidloes to Gorn to the point at which the same reaches the hedge which runs along the eastern side of the Chapel House; thence along the last-mentioned hedge to the point at which the same reaches Lletty-coch-y-nant brook; thence, westward, along Lletty-coch-y-nant brook to the point at which the same is met on the left hand by a small stream; thence along the last-mentioned stream to the spring from which the same proceeds; thence in a straight line to the nearest point in the road from Llanidloes to the barn Leasow; thence, westward, along the road from Llanidloes to the barn Leasow to the point at which the same meets the boundary of the borough of Llanidloes; thence, southward, along the borough of Llanidloes to the point at which the same meets Cwm Jonathan rill; thence along Cwm Jonathan rill to the point first described.

Machynlleth.—The township and liberties of Machynlleth; and also that detached part of the township of Isygarreg which adjoins the north-eastern boundary of the township and liberties of Machynlleth.

Montgomery.—The old borough of Montgomery.

Newtown.—The parish of Newtown, and the respective townships of Hendidley and Gwestydd.

Welshpool.—The parish of Pool, and the township of Gungrog Fechan in the parish of Guilsfield, except that part of the township of Cyfronnydd in the parish of Pool which is detached from the main body of such parish.

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50. COUNTY OF PEMBROKE.

HAVERFORDWEST DISTRICT.

Fishguard.—From the point at which the low-water mark would be cut by a straight line to be drawn thereto from the gate of the fort, through the eastern extremity of the southern wall of the fort, in a straight line to the gate of the fort; thence in a straignt line to the north-western corner of Parc-y-Morfa Meadow; thence along the western fence of Parc-y-Morfa Meadow to the south-western corner thereof; thence in a straight line to the highest point of Parc-y-Morfa Rock; thence in a straight line to the north-western corner of the fence which divides the Glyn Amel property from the property of Mr. Vaughan; thence, southward, along the said fence of the Glyn Amel property to the point at which the same meets the northern stream of the river Gwaine; thence up the said stream to the point at which the same meets the boundary of the old borough; thence, eastward, along the boundary of the old borough to the point at which the same meets the low-water mark; thence, eastward, along the low-water mark to the point first described.

Haverfordwest.—From the point at which a straight line drawn from St. Thomas's church to the gate at the north-eastern corner of the field called Hill Park cuts the boundary of the old borough, along such straight line to the said gate; thence in a straight line to the gate which crosses the road leading to Scotch Well House; thence along the last-mentioned road to the point at which the same reaches Scotch Well House; thence along the road which leads by Sandpool into the Cardigan road to the north-eastern corner of Sandpool; thence in a straight line to the cottage of Philip White; thence in a straight line to the left pier of the weir on the river Cleddy; thence along the river Cleddy to the point at which the same would be cut by a straight line to be drawn from Prendergast church to the gate leading from the lane on the north-east of Little Slade farm into the paddock of Little Slade farm; thence in a straight line to the last-mentioned gate; thence in a straight line to the point at which the boundary of the old borough would be cut by a straight line to be drawn from the last-mentioned gate to the point at which the Poorfield road (otherwise called Jury Lane) leaves the St. David's road; thence, westward, along the boundary of the old borough to the point first described.

Narberth.—From the southern end of the turnpike gate house on the Redstone road, westward, along the fence which abuts on the said house and is the northern boundary of a field of which George Harris is tenant and Mr. Thomas Eaton landlord, to the north western corner of the said field; thence in a straight line to the north-eastern corner of a field belong-

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ing to George Devonald esquire, and bounded on the south by the turnpike road to Haverfordwest; thence along the private road which runs from the last-mentioned field to the point at which the said private road meets the said road to Haverfordwest; thence in a straight line across the said road to Haverfordwest to the point at which the same is met by the western boundary of the Town Moor; thence, southward, along the western and southern boundary of the Town Moor to the gate of a lane at the south-eastern corner thereof; thence along the said lane to the point at which the same meets the boundary of Narberth churchyard; thence, westward, along the boundary of Narberth churchyard to the south-western corner thereof; thence in a straight line to the point at which the stream from Narbeth Bridge would be cut by a straight line to be drawn from the point last described to the point at which the road from the parsonage meets the road from Pembroke; thence up the said stream to the point at which the same is joined by the stream from Narberth Mill; thence up the stream flowing from Narberth Mill to the south-western corner of the field of which Lewis Watkins is tenant and Baron Retzen is landlord; thence, eastward, along the boundary of the last-mentioned field to the point at which the same meets the southern boundary of the field belonging to Mr. Henry Davies, in which there is a turnstile; thence, eastward, along the southern boundary of the said field of Mr. Henry Davies, and the southern and eastern boundary of the adjoining field belonging to George Phillips, esquire, to the point at which the eastern boundary of the said field of George Phillips, esquire, meets the occupation road leading to Blackalder; thence, eastward, along the occupation road to Blackalder to the point at which the same meets the south-eastern boundary of the easternmost of two contiguous fields of which Mrs. Evans is tenant and Daniel Thomas landlord; thence along the boundary of the last-mentioned field to the point at which the same meets the Carmarthen road; thence in a straight line across the Carmarthen road to the south-eastern corner of the field belonging to John Lewis; thence along the eastern boundary of John Lewis's field to the point at which the same cuts the Cardigan road; thence in a straight line across the Cardigan road to the south-western corner of Jesse's Well House; thence in a straight line to the point at which the fence of the grounds attached to the house called Bloomfields would be cut by a straight line to be drawn from the point last described to the house called Bloomfields; thence, westward, along the last-mentioned fence to the point at which the same cuts the Redstone road; thence along the Redstone road to the point first described.

PEMBROKE DISTRICT.

Milford.—From the point at which Prix Pill falls into the

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sea, along Prix Pill, to the point at which the same is met by the lane coming down by Cwm, and sometimes called Cwm Lane; thence along Cwm Lane to the point at which the same meets the road from Haverfordwest; thence along the road from Haverfordwest to the point at which the same is met by Priory Lane; thence along Priory Lane to the point at which the same meets, on the left, a road sometimes called the New road; thence along the New road to the point at which the same meets a lane sometimes called White Lady's Lane, leading to a field north of the brewery, sometimes called Haggard Field; thence along White Lady's Lane to the point at which the same is cut by the fence of Haggard Field; thence northward, along the fence of Haggard Field to the north-western corner thereof; thence in a straight line in the direction of the northern fence of Haggard Field to Priory Pill; thence in a straight line to the white warehouse, standing at the head of the rope walk in Hubberstone parish; thence along Spike Lane, which proceeds from the said white warehouse, to the point at which the same meets Conjwick Lane; thence along Conjwick Lane to the point at which the same meets the lane which was lately part of Point Field; thence along the lane lately part of Point Field to the point at which the same ends on the common; thence in a straight line through the westernmost point of the fort to the sea coast; thence along the sea coast to the point first described.

Pembroke.—The respective parishes of St. Mary and St. Michael, and also the space comprised within the boundary hereafter described (together with all such parts, if any, of the old borough of Pembroke as lie without the said boundary):

From the point on the south-west of the town at which the brook called the Taylor's Lake meets the boundary of the parish of St. Mary, northward, along the said brook, to the point at which the same joins the Pill near Quoit's mill; thence along the said Pill to the point at which the same meets the boundary of the parish of St. Mary; thence, eastward, along the boundary of the parish of St. Mary to the point first described.

Tenby.—The in-liberty of Tenby.

Wiston.—The old borough of Wiston.

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51. COUNTY OF RADNOR.

RADNOR DISTRICT.

Cefn Llys.—The old borough of Cefn Llys.

Knighton.—The old borough of Knighton.

Knucklas.—The old borough of Knucklas.

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Presteign.—The ancient lordship, manor, and borough of Presteign, together with such parts, if any, of the township of Presteign, and of the chapelry of Discoyd, as are without the ancient lordship, manor, and borough of Presteign; and also the space included within the following boundary; (that is to say),

From the point on the north of the town at which Norton brook falls into the river Lug, in a straight line to the point at which the road to Wigmore and Ludlow is met by the road to Kinsham village; thence in a straight line to the point at which the right-hand branch of the Clatter brook falls into the river Lug; thence along the river Lug to the point first described.

New Radnor. - The old borough of New Radnor.

Rhaydrgwy.—From the point at which the boundary of the old borough would be cut by a straight line to be drawn from Rhadyr church to the bridge over the Gwynllin brook on the new road to Aberystwith, in a straight line to the said bridge; thence along the Gwynllin brook to the weir or dam head; thence along the southern bank of the mill dam to the point at which the same is cut by the eastern fence of Gwynllin-lain field; thence, southward, along the eastern fence of Gwynllin-lain field to the gate leading into the yard of the grist mill and woollen manufactory belonging to David Evans; thence along the road which crosses the said yard to another gate at the south-eastern corner thereof; thence in a straight line to the north-eastern corner of the farmhouse called Ty-Newidd or New House; thence in a straight line to the point at which the boundary of the old borough would be cut by a straight line to be drawn from the New House to the bridge over the river Wye; thence, southward, along the boundary of the old borough to the point first described.

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3 & 4 WILL. 4, CAP. 90*.

An Act to repeal an Act of the Eleventh Year of his late Majesty King George the Fourth, for the Lighting and Watching of Parishes in England and Wales, and to make other Provisions in lieu thereof.

11 Geo. 4, c. 27.

WHEREAS an Act was passed in the eleventh year of the reign of his late Majesty King George the Fourth, intituled,

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* See ante, s. 88, of the Municipal Corporation Act, p. 153. See also 11 & 12 Vict. c. 34, for consolidating in one Act the provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving towns and populous districts.—As to the construction of this Act, see *Reg.* v. *Marriott*, 12 A. & E. 779; *Reg.* v. *Whipp*, 4 Q. B. 141, 3 G. & D. 372; *Beechey* v. *Quentery*, 10 M. & W. 65.

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"An Act to make Provision for the Lighting and Watching of Parishes in England and Wales;" and whereas doubts have arisen as to the construction of some of the provisions of the said Act, and it is expedient that the said Act should be repealed, and that other provisions should be substituted in lieu thereof: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, the said Act passed in the eleventh year of the reign of his said late Majesty King George the Fourth shall be, and the same is hereby repealed. Recited Act repealed.

II. *Such repeal not to affect the proceedings under that Act previous to the passing of this Act.*

III. *Inspectors under former Act to continue to act until others appointed.*

IV. *Act applicable to all parishes.*

V. *On application of three rated inhabitants, churchwardens to convene a meeting in vestry, to determine whether the provisions of this Act shall be adopted.*

VI. *Chairman to be elected, who shall determine any controversies.*

VII. *Chairman to read requisition, and require persons to determine whether Act shall be adopted.*

VIII. *If meeting determine to proceed, the provisions of this Act shall thenceforth take effect.*

IX. *Inhabitants to fix amount of money to be raised. Poll may be demanded as to adoption of Act.*

X. *Notice of poll to be given by churchwardens.*

XI. *Forms of notice and declaration.*

XII. *Churchwardens to examine the votes, and declare whether two-thirds of them are in favour of adopting this Act.*

XIII. *Rate-payers may inspect votes.*

XIV. *No person to vote unless he has been rated one year.*

XV. *Notice of adoption of this Act. Act may be abandoned.*

XVI. *If meeting determine against adopting this Act, &c.*

XVII. *Mode of electing inspectors.*

XVIII. *At the end of twelve months the inspectors are to give notice to churchwardens that they are ready to produce their accounts, and churchwardens to call a meeting for that purpose.*

XIX. *Inspectors at such meeting to produce accounts: one-third of them to go out of office, and others elected.*

XX. *Chairman to decide questions as to eligibility, &c.*

XXI. *How vacancies in the number of inspectors shall be filled up.*

XXII. And be it further enacted, That the inspectors for executing this Act in any parish shall meet on the first Monday in every month, at noon, at some convenient place or office previously publicly notified; and at such monthly Inspectors to meet monthly.

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meeting it shall be lawful for any inhabitant rated to the relief of the poor of any such parish to appear there, and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Act.

Special meetings of inspectors.

XXIII. And be it further enacted, That such inspectors shall meet at all other times and so often as at any previous meeting shall be determined upon; and it shall be at all times competent for any one inspector, when three inspectors only shall have been appointed, and in all other cases for any two inspectors, by writing under his or their hands, to summon, upon at least forty-eight hours notice, the inspectors for any special purpose therein named, and for such time as shall be therein named; and that at all meetings of such inspectors any number not less than one-third of the whole number, when more than three inspectors shall have been appointed, and when only three inspectors shall have been appointed, then not less than two inspectors, shall constitute a quorum for transacting business.

Quorum.

Inspectors to appoint officers during pleasure, and rent an office for the transaction of their business.

XXIV. And be it further enacted, That it shall be lawful for the said inspectors elected in any parish under this Act for the time being, and they are hereby authorised and required, to appoint, during pleasure, such treasurer and other officers as they shall think necessary for effecting the purposes of this Act, and to remove and displace the same, and to hire and rent a sufficient office or house or room for holding their meetings and transacting their business: and also to appoint suitable salaries, wages, and allowances, to and for such treasurer and other officers, and also to agree for a reasonable rent for such office or house or room, and to pay such salaries, wages, and allowances, and such rent, out of the monies received by the inspectors under the authority of this Act: Provided nevertheless, that no person shall at the same time hold two offices or situations under the said inspectors.

Security to be taken from treasurer.

XXV. And be it further enacted, That it shall be lawful for the said inspectors, or any two or more of them, and they are hereby required, to take security from the treasurer to be appointed by virtue of this Act for the due execution of his office of treasurer, according to the true intent and meaning of this Act; which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time; and in case any such treasurer shall neglect or refuse, for the space of three weeks next after his appointment, to give or offer such security to the satisfaction of the said inspectors, then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes; and the said inspectors shall, within three weeks then next, assemble and appoint some other fit and proper person to the office of treasurer, instead

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of the person so refusing or neglecting as aforesaid; and shall so assemble and appoint from time to time, until security shall be given to their satisfaction as aforesaid.

Treasurer and officers to account.

XXVI. And be it further enacted, That every such treasurer and other officer appointed by virtue of this Act shall, under his respective hand, and at such time or times, and in such manner as the said inspectors shall direct, deliver to the said inspectors, or such person as they shall appoint, true and perfect accounts in writing, of all matters and things committed to his charge by virtue of this Act, and also of all monies which shall have been by such officer received by virtue of or for the purposes of this Act, and of how much thereof shall have been expended and disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such monies as shall remain due from him to the treasurer for the time being, or to such person or persons as the said inspector shall appoint to receive the same; and if any such treasurer, officer, or other person, shall refuse or neglect to make and render such account, or to produce and deliver up the vouchers relating to the same, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said inspectors, or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said inspectors, by notice in writing under the hands and seals of any two or more of the said inspectors, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said inspectors or such other person or persons as aforesaid respecting the same, then and in every such case, upon complaint made by the said inspectors, or by such person or persons as they, the said inspectors, shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to any justice of the peace, such justice may, and he is hereby authorised and required to issue a summons under his hand and seal for the officer so refusing or neglecting to appear before two justices of the peace; and upon the said officer appearing, or having been so summoned and not appearing without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices to hear and determine the matter in a summary way; and if, upon confession of the party, or by the testimony of any credible witness or witnesses upon oath (which oath such justices are hereby empowered to administer), it shall appear to such justices that any monies remain due from such officer, such justices may and they are hereby authorised and required, upon non-payment thereof, by warrant under their hands and seals, to cause such money to be levied by distress and sale of the goods and chattels of such officer; and if no goods and chattels of such officer shall be found sufficient to answer

Proceedings against officers neglecting to account.

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and satisfy the said money, and the charges of distraining and selling the said goods and chattels, or if it shall appear to such justices that such officer had refused or wilfully neglected to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to remain, without bail or mainprize, until he shall have given a true and perfect account as aforesaid, or until he shall have paid such monies as aforesaid, or compounded with the said inspectors for such money, and shall have paid such composition in such manner as they shall appoint (which composition the said inspectors are hereby empowered to make and receive), and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof to the said inspectors or to such other person or persons as aforesaid; but no such offender shall be kept or detained in such common gaol or house of correction for want of sufficient distress by virtue of this Act for any longer space or time than three calendar months.

XXVII. *Commitment of offender not to discharge his sureties.*

XXVIII. *Officers taking any fee or reward besides the salary or fees appointed, to forfeit 50l.*

Inspectors may sue and be sued in the name of any one of them.

XXIX. And be it further enacted, That the said inspectors may sue and be sued in the name of any one of the inspectors for the time being; and all actions or suits that may be necessary or expedient to be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act, or for or in respect of any other matter or thing relating to this Act, may be brought in the name of any one of the said inspectors; and that no action or suit which may be brought, commenced, or prosecuted by or against the said inspectors, or any of them, by virtue or on account of this Act, shall abate or be discontinued by the death, resignation, or removal of such inspector, but such inspector shall be deemed plaintiff or defendant in any such action or suit (as the case may be): Provided also, that in all cases in which the inspector as aforesaid shall, in pursuance of this Act, be the plaintiff or defendant on the record in any action or actions, suit or suits, in which in effect the said inspectors shall be suing or sued in the name of such one inspector as aforesaid, he (although appearing as the plaintiff or defendant on the record) may and shall nevertheless (if not otherwise interested or objectionable) be a good examinable and competent witness in every action or suit either for or against

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the said inspectors; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any and every such action, suit, or proceeding, shall and may be lawfully made by such one inspector notwithstanding he shall be nominal plaintiff or defendant on the record as aforesaid: Provided also, that every or any such inspector in whose name any action or suit shall be commenced, prosecuted, or defended, in pursuance of this Act, shall always be reimbursed and paid out of the monies to arise by virtue of this Act all such costs, charges, and expenses as he shall be put to or become chargeable with by reason of his being made plaintiff or defendant therein; and in case of his removal from office, or ceasing to act as such inspector, all such costs, charges, and expenses shall be paid by the inspector for the time being; and no inspector shall be personally answerable or liable for the payment of the same or any part of them, unless such action or suit shall arise in consequence of his own wilful neglect or default, or have been brought or commenced, or be defended, without the order or direction of the said inspectors.

Proceedings at meetings of inspectors to be entered in books, which shall be good evidence.

XXX. And be it further enacted, That all acts, orders, and proceedings of the said inspectors at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by two of the inspectors who were then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as evidence of all such acts, orders, and proceedings, upon any appeal or trial or information, or any proceedings, civil or criminal, and in any court or courts of law or equity whatsoever.

Accounts to be kept.

XXXI. And be it further enacted, That the said inspectors shall and they are hereby required from time to time to order and direct a book or books to be provided and kept, in which book or books shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Act, and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of the said inspectors, and of every inhabitant rated to the relief of the poor of the parish adopting the provisions of this Act, without fee or reward; and the said inspectors and other persons aforesaid, or any of them, shall or may take copies of or extracts from the said book or books, or any part thereof, without paying for the same; and in case the said inspectors shall refuse to permit or shall not permit the said persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such inspector shall forfeit and pay any

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sum of money not exceeding five pounds for each default, to be levied and applied in manner hereinafter provided.

Inspectors to issue an order to overseers for payment of money for the purposes of this Act.

XXXII. And be it further enacted, That, as soon as the inspectors have been elected as aforesaid, it shall be lawful for them, or any two or more of them, from time to time to issue an order under their hands to the overseers of the poor of any parish to which the provisions of this Act shall be extended, bywhich order they shall require the said overseers to levy the amount mentioned in the said order.

Power to collect rates.

XXXIII. And be it further enacted, That the overseers aforesaid shall, for the purpose of collecting, raising, and levying the rate necessary for the purposes of this Act, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor in the said parish*: Provided always, that owners and occupiers of houses, buildings, and property, (other than land) rateable to the relief of the poor in any such parish shall be rated at and pay a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of this Act: Provided also, that the total amount of the sum to be collected, raised, and levied for the purposes of this Act within any one year shall not exceed such sum as shall have been agreed on by the inhabitants of the said parish as aforesaid, and that the said sum shall be assessed upon the full and fair annual value to which lands, houses, buildings, and other property within the said parish shall be rated or shall be rateable, according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish.

Land and houses to be rated separately.

XXXIV. Provided always, and be it further enacted, That it shall be lawful for the overseers of the poor of any such parish, and they are hereby required, whenever, according to the rate made for the relief of the poor, one and the same person shall be rated in one sum in respect of land, and also of houses, buildings, and other property, to cause such land, and also such houses, buildings, and other property to be separately assessed, and the sum hereby authorised to be levied shall be assessed accordingly: Provided always, that every court-yard, yard, or garden (such garden not being a market-garden or nursery-ground), shall be included in, and make part of the assessment to be made on the house, buildings, or other property to which they may be respectively attached: Provided also, that such land, houses, buildings, and other property, shall not in the whole be assessed at a

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* As to the publication of the rate, see 1 Vict. c. 45. s. 2: *Reg.* v. *Marriott*, 12 A. & E. 779; *Reg.* v. *Whipp*, 4 Q. B. 141, 3 G. & D. 372; *Ormerod* v. *Chadwick*, 14 M. & W. 367.

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higher amount than they were in the last rate made for the relief of the poor within the said parish.

Power of succeeding overseers to collect rate.

XXXV. And be it further enacted, That if the overseers of the poor of any parish adopting the provisions of this Act shall go out of office before they shall have collected or levied the amount mentioned in the order issued under the hands of the said inspectors, in pursuance of this Act, they shall deliver to the succeeding overseers, within seven days from the time they go out of office, a full and particular account in writing of the names of the parties from whom any money may be due on account of the rate made in pursuance of this Act, as well as the last order issued to them by the said inspectors; and in such case the succeeding overseers shall have the like powers and remedies under this Act for the collecting and recovery thereof, and shall be liable to the same penalties and forfeitures in case of the non-payment to the said inspectors, as their predecessors had or were liable to.

XXXVI. *Overseers are to pay amount to treasurer.*

Where other persons are authorised to collect poor's rates, such persons to be deemed overseers.

XXXVII. And be it enacted, That where any persons other than the overseers of the poor shall, by virtue of any office or appointment, be authorised and required to make and collect, or cause to be collected, the rate for the relief of the poor in any parish to which all or any of the provisions of this Act shall be extended, such persons, by whatsoever title they may be called, shall be deemed to be overseers of the poor within the meaning of this Act, and to be included under and denoted by the words "overseers of the poor," for all the purposes of this Act, as fully as if they were commonly called or known by the title of "overseers of the poor."

Overseers may be distrained upon for non-payment.

XXXVIII. And be it enacted, That in case the amount directed by such order as aforesaid, to be paid by the overseers in any parish to which all or any of the provisions of this Act shall be extended, shall not be paid to the said treasurer within the time specified for that purpose in the said order, any justice of the peace, upon complaint thereof made to him by the said treasurer or by any one of the inspectors, may, and he is hereby authorised and required, to issue a summons under his hand and seal for the said overseers so refusing or neglecting to pay such money as aforesaid, to appear before two justices of the peace; and upon the said overseers appearing, or having been so summoned and not appearing, without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices, and they are hereby required, in case the said money is not paid, to issue their warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers; and in case the goods of all the overseers shall not be sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the

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purposes of this Act, and shall be collected by the like method.

Watchmen, &c. to be appointed, and provided with arms, clothing, &c.

XXXIX. And be it further enacted, That the said inspectors shall, from time to time, appoint and employ such number of able-bodied watch-house keepers, serjeants of the watch, watchmen, patrols, street-keepers, and other persons as they shall think sufficient for the proper protection of the inhabitants, houses, and property, streets, and other places within the limits of this Act, by day or by night, or by day and by night, and provide for the use of all such watchmen, watch-house keepers, serjeants of the watch, patrol, and persons as aforesaid, such clothing, arms, ammunition, and weapons, and shall assign to them such beats and rounds and duties, and appoint such hours for them to be on duty, and also such wages, rewards, and gratuities, or remunerations for their services, and also make such rules, orders, and regulations relative to such watch-house keepers, serjeants of the watch, watchmen, patrol, street-keepers, and other persons, and their duties, as to the said inspectors shall seem meet, and also shall and may offer and give, as well to the said persons as to any other not specially employed by them, such gratuities and rewards for apprehending felons and others, offenders within the limits of this Act, as to them shall seem proper; and shall and may defray the expenses of prosecuting any such felons and offenders, for the protection of the inhabitants of any parish adopting the provisions of this Act, or in defending any of the said persons or other officers of the said inspectors in the execution of their duty, as they shall think proper; and the said wages, rewards, gratuities, and the costs of such prosecutions or defences, and all other expenses that may be incurred by the said inspectors for the protection and guard of the inhabitants, shall and may be paid by the said inspectors out of the monies received in pursuance of this Act.

Watchmen, &c. to deliver up clothing on removal, &c.

XL. And be it further enacted, That all such clothing, arms, ammunition, and weapons so provided for the use of such watchmen, watch-house keepers, serjeants of the watch, patrol, and persons as aforesaid, shall remain and continue the property of the inspectors for the time being, and in case of the resignation, removal, or death of any such watchmen, watch-house keeper, serjeant of the watch, patrol, or person as aforesaid, shall be returned to the said inspectors; and in case of neglect or refusal so to do, the said watchmen, watch-house keeper, serjeant of the watch, patrol, or person as aforesaid, or in case of his death the party in possession thereof, shall be subject and liable to a penalty not exceeding the sum of twenty pounds, to be recovered for the use of the said inspectors.

Penalty.

Duty of watchmen, &c.

XLI. And be it further enacted, That the watchmen, serjeants of the watch, patrols, and other persons to be appointed

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by virtue of this Act shall, during the time they shall be on duty, use their utmost endeavours to prevent any mischief by fire, and also to prevent all robberies, burglaries, and other felonies and misdemeanors, and other outrages, disorders, and breaches of the peace within the limits of the parish adopting the provisions of this Act; and to apprehend and secure all felons, rogues, vagabonds, and disorderly persons who shall disturb the public peace, or any person or persons wandering, secreting, or misbehaving himself, herself, or themselves, or whom they shall have reasonable cause to suspect of any evil designs, and to secure and keep in safe custody every such person, in order that he or she may be conveyed as soon as conveniently may be before one of his Majesty's justices of the peace, to be examined and dealt with according to law; and it shall and may be lawful to and for the said watchmen, serjeants of the watch, patrols, and other person or persons so appointed as aforesaid, to call and require any person or persons to aid and assist them in taking such felons, rogues, vagabonds, and all disorderly or suspected persons as aforesaid; and in case any person or persons shall assault or resist or shall promote or encourage the assaulting or resisting any of the watchmen, serjeants of the watch, patrols, or other person or persons so appointed as aforesaid, in the execution of their duty, every such person shall for every such offence forfeit and pay any sum not exceeding forty shillings; and in case any such offender shall not, on conviction, pay the said forfeiture, such justice is hereby required to commit him, her, or them to the house of correction, there to be kept to hard labour, if the said justice shall so order, for any time not exceeding three calendar months, unless such forfeiture shall be sooner paid; or instead of committing the said offender as aforesaid, the said justice may, by warrant under his hand and seal, cause the said forfeiture as well as the costs (if any) to be levied by distress and sale of the goods and chattels of the offender, returning the overplus (if any) of the money raised or recovered, after discharging the said forfeiture and the costs and expenses of recovering and levying the same, to the owner of the goods and chattels so seized and distrained.

Watchmen, &c, to be sworn in, and to have the power of constables.

XLII. And be it further enacted, That all watchmen, serjeants of the watch, and patrols shall be sworn in as constables before any justice of the peace, and act as such while in execution of the powers and authorities of this Act; and they are hereby invested with and shall have and enjoy the like powers and authorities, privileges and immunities, and shall be subject and liable to such and the like penalties and forfeitures as any constable or constables is or are invested with, or shall or may have and enjoy, or is or are or shall be subject or liable to by law: Provided nevertheless, that no person by being sworn in and acting as or executing the office of a constable shall thereby gain a settlement in such parish.

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Certain fees to be paid over to inspectors.

XLIII. And be it further enacted, That in all such cases in which any of the duties usually performed by constables shall have been executed by any of the officers appointed by the inspectors as hereinbefore enacted, all fees and allowances for the performance of such duties shall be paid over to the said inspectors, to be by them applied in aid of the rate levied under the provisions of this Act.

Fire-engines to be provided.

XLIV. And be it further enacted, That it shall be lawful for the said inspectors from time to time to provide and keep up fire engines, with pipes and other utensils proper for the same, for the use of the parish adopting the provisions of this Act, and to provide a proper place or places for the keeping of the same, and to place such engines under the care of some proper person or persons, and to make him or them such allowance for his or their trouble as may be thought reasonable, and the expenses attending the providing and keeping of such engines shall be paid out of the money authorised to be received by the inspectors under the provisions of this Act.

Lamp-irons to be put up.

XLV. And be it further enacted, That it shall be lawful for the said inspectors, and they are hereby empowered, from time to time, to cause such lamp-irons or lamp-posts, or other posts, to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or enclosures (doing as little damage as may be practicable thereto), or to be put up and erected in such other manner, within all or any of the said roads, streets, and places within the limits of this Act, as they shall think proper; and also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp-irons and lamp-posts, as they shall think necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with gas, oil, or otherwise, for such number of hours in every twenty-four hours as they shall think necessary; and also to cause such a number of watch-houses or watch-boxes to be provided, erected, or affixed as they shall think necessary for watching all or any of the streets, roads, and places within the limits of this Act.

XLVI. *Gas-pipes are not to be laid on private premises without consent.*

XLVII. *Owners of private grounds may alter position of pipes.*

XLVIII. *For stopping the escape of gas; penalty for neglect.*

XLIX. *Power to convey away washings of gas-works.*

L. *Penalty for conveying washings into any river, &c.*

LI. *Gas-pipes to be laid four feet from water-pipes, and in a particular manner.*

LII. *To prevent escape of gas and contamination of water.*

LIII. *For ascertaining if the water be contaminated.*

LIV. *Persons supplying gas are liable to be indicted for a nuisance.*

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LV. *Penalty for wilfully destroying or injuring lamps.*

LVI. *How persons accidentally breaking lamps are to be dealt with.*

LVII. And be it further enacted, That it shall and may be lawful to and for the said inspectors from time to time to enter into any contract or contracts with any person, company or companies whatsoever, for lighting the same streets, roads, and other places, or any of them, or any part thereof, either with oil or with gas, or with any other material or in any other manner whatsoever; or for furnishing lamps, lamp-irons, lamp-posts, watch-boxes, posts, chains, pales, rails, and other things necessary for the purposes aforesaid, or any materials for the same; which contract or contracts shall specify the several works to be done and the prices to be paid for the same, and the time or times when the works shall be completed, and the penalties to be suffered in cases of non-performance thereof; and shall be signed by two or more of the said inspectors, and also by the person or persons contracting to perform such works respectively; which contract or contracts, or a copy or copies thereof, shall be entered into a book to be kept for that purpose; but no contract above the value or sum of twenty pounds shall be entered into unless previous to the making of any such contract fourteen days notice shall be given in one or more of the public newspapers published in the county in which the said parish shall be situate, expressing the intention of entering into such contract, in order that any person or persons willing to undertake the same may make proposals for that purpose, to be offered and presented to the said inspectors at a certain time and place in such notice to be mentioned: Provided always, that if the said inspectors shall be of opinion that it will not be advantageous to contract with the person or persons offering the lowest price, it shall be lawful for the said inspectors to contract with such other person or persons as they shall think proper. Power for inspectors to contract for the works directed to be done by this Act.

LVIII. And be it further enacted, That in case the same shall not be well and sufficiently performed, according to the terms, intent, and meaning of such contract or contracts, or shall not be finished or completed at or within the time or times specified in such contract or contracts, then the said inspectors may cause an action to be brought in any of his Majesty's courts of law at Westminster against any such contractor, for any penalty contained in his contract; and on proof of his signing the said contract or contracts, or non-performance thereof at the time or times for that purpose to be therein mentioned, the said inspectors shall be entitled to and recover the full penalty contained in any such contract, which, when recovered, shall be applied for the purposes of this Act: Provided always, that it shall be lawful for the said inspectors (if they think fit) to compound and agree with any contractor for any penalty incurred by him for the Inspectors may sue for breach of contract; or may compound with contractor.

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breach or non-performance of any such contract, for such sum of money as the said inspectors shall think proper, not being less than the injury or damage sustained by the breach or non-performance of such contract, and all costs, charges, and expenses which shall be occasioned thereby; and it shall be lawful for the said inspectors to cancel or make void any contract with any person or persons whomsoever, by mutual consent, if they shall think proper.

Inspectors may purchase or rent ground or buildings for the purposes of this Act.

LIX. And be it further enacted, That the said inspectors may, and they are hereby authorised and empowered to treat with the owner or owners and occupier or occupiers of any houses, buildings, lands, and grounds, for the purposes of this Act, for such sum or sums of money, or yearly rent, or for such time as to them shall appear reasonable, (which sum or sums of money and yearly rent shall be respectively paid out of the monies to arise by virtue of this Act,) in such place or places as they may think proper.

Property of lamps, &c. vested in the inspectors.

LX. And be it further enacted, That the property of and in all lamps, lamp-irons, lamp-posts, watch-houses, watch-boxes, posts, chains, pales, and rails in, about, or belonging to the said streets and places within any parish or part of a parish adopting the provisions of this Act, or any of them, and of and in all the iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto, (except when the same shall be otherwise regulated by contract with the said inspectors) shall be and the same are hereby vested in the said inspectors, and may be sold and disposed of from time to time as they shall think proper; and the money arising from such sale or sales shall be applied towards the purposes of this Act; and the said inspectors are hereby authorised and empowered to bring or cause to be brought any action or actions in such name or names, and in manner as herein is provided, or to prefer or order and direct the preferring of any bill or bills of indictment, against any person or persons who shall steal, take, or carry away (as the case may be) all or any part of such lamp-irons, lamp-posts, watch-houses, watch-boxes, iron, timber, and stone, bricks, furniture, posts, chains, pales, rails, or other materials and things as aforesaid; and in all such actions or bills of indictment it shall be and be deemed and taken to be sufficient to state generally that the article or articles, thing or things, for or on account of which such action or actions shall be brought, or such bill or bills of indictment preferred, is or are the property of the inspectors, without particularly stating or specifying the name or names of all or any of the said inspectors.

LXI. *Inspectors of adjoining parishes may unite.*

For easy prosecution and conviction of offenders.

LXII. And for the more easy prosecution and conviction of offenders against this Act, be it further enacted, That all and every justices and justice of the peace, before whom any person or persons shall be convicted or prosecuted for any offence against this Act, shall and may cause the information

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and conviction respectively to be drawn in the form following, or in other words to the same effect; (that is to say,)

Form of information.

"County of —— to wit. } Be it remembered, that, on the —— day of ——, *A. B.* of —— informeth —— of his Majesty's justice [*or* justices] of the peace for the said —— of ——, that —— of —— in the —— of —— [*here describe the offence, with the time and place, and follow the Act as near as may be*], contrary to the provisions of an Act made in the —— year of the reign of King William the Fourth, intituled [*insert the title of this Act*], which hath imposed a forfeiture of —— for the said offence. Taken the —— day of —— before ——."

Form of conviction.

"County of —— to wit. } Be it remembered, that, on the —— day of —— in the —— year of the reign of —— and in the year of our Lord ——, *A. B.* is convicted before —— of his Majesty's justice [*or* justices] of the peace for the said —— for [*here specify the offence, and when and where committed,*] contrary to the form of the statute made in the —— year of the reign of King William the Fourth, intituled [*here set forth the title of this Act*]; and —— do hereby declare and adjudge that the said —— hath forfeited for the said offence the sum of —— [*or* shall be committed to —— for the space of —— *as the case may be.*] Given under —— hand and seal the day and year first above written."

Recovery and application of penalties.

LXIII. And be it further enacted, That all fines, penalties, and forfeitures inflicted or imposed by this Act, or by virtue of any rule or order made in pursuance hereof (the mode of recovery whereof is not herein otherwise provided for), may, in case of non-payment thereof, be recovered in a summary way, by order and adjudication of any two justices of the peace, on complaint to them for that purpose exhibited, and afterwards be levied, as well as the costs (if any) of such proceedings, on non-payment, by distress and sale of the goods and chattels of the offender or respective offenders, or person or persons liable to pay the same, by warrant under the hands and seals of such justices, who are hereby authorised and required to summon and examine any witness upon oath or affirmation of and concerning such offences, matters, and things, and to hear and determine the same; and the overplus (if any) of the money raised or recovered, after discharging the fine, penalty, or forfeiture for which such warrant shall be issued, and the costs and expenses of recovering and levying the same (if any such there be), shall be rendered to the owner or owners of the goods and chattels so seized and distrained; all which penalties, not herein directed to be otherwise applied, shall be paid to the said inspectors or their treasurer, to be applied for such purposes of this Act as the said inspectors shall order and direct, except in all such cases where the penalty or forfeiture shall be incurred by the said inspectors, and then the same shall be paid to the informer;

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and it shall be lawful for the said justices to order the offender or offenders so convicted to be detained in safe custody until return can be conveniently made to such warrant or warrants of distress, unless the said offender or offenders shall give sufficient security, to the satisfaction of such justices, for his, her, or their appearance before the said justices on such day or days as shall be appointed for the return of such warrant or warrants of distress, such day or days not being more than seven days from the time of taking such security, and which security the said justices are hereby empowered to take by way of recognisance or otherwise; but if upon the return of such warrant or warrants it shall appear that no sufficient distress can be had whereupon to levy the said penalty or penalties and such costs as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of any such justices, upon the confession of the offender or offenders, or otherwise, that he, she, or they have or hath not sufficient goods and chattels whereupon such penalties, forfeitures, costs, and expenses can be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant of distress, and thereupon it shall be lawful for such justices, and they are hereby required and empowered, by warrant or warrants under their hands and seals, to commit such offender or offenders to the common gaol or house of correction in the said county or place in which the said parish shall be situate, there to be kept, with or without hard labour, without bail or mainprize, for any time not exceeding six calendar months, or until such offender or offenders shall have paid such penalty or penalties, and all costs and charges attending such proceedings as aforesaid, to be ascertained by such justices, or shall otherwise be discharged by due course of law.

Inspectors exempted from personal liability.

LXIV. Provided always, and be it further enacted, That nothing herein contained shall be deemed, construed, or taken to extend to render the said inspectors personally, or any of their goods and chattels (other than such as may be invested in them in pursuance of this Act). liable to the payment of any sum or sums of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is herein directed to be made by the said inspectors.

LXV. *Inhabitants may be witnesses.*

Appeal to the quarter sessions against order of inspectors, &c.

LXVI. Provided also, and be it further enacted, that if any person or persons shall find himself, herself, or themselves aggrieved by any order, direction, or appointment of the said inspectors, or any order or conviction of one or more justice or justices of the peace, it shall be lawful for such person or persons to appeal to any general or quarterly sessions of the peace to be held in and for the county, city, riding, borough, town, shire, division, liberty, or place in which the parish shall be situate, within four calendar

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months next after the cause of complaint shall have arisen, or if such sessions shall be held before the expiration of one calendar month, then such appeal shall be made to the secondly-succeeding sessions, either of which court of sessions is hereby empowered to hear and finally determine the matter of the said appeal, and to make such order therein as to them shall seem meet, which order shall be final and conclusive to and upon all parties; provided that the person or persons so appealing shall give or cause to be given at least fourteen days notice in writing of his, her, or their intention of appealing as aforesaid, and of the matter or cause thereof, to the said inspectors, or other the respondent or respondents, that within five days after such notice shall enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace, which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever.

Appeals against rate to be subject to same rules as appeals against poor rates.

LXVII. Provided also, and be it further enacted, That if any person or persons shall find himself, herself, or themselves aggrieved by any rate made by the overseers of the poor for the purposes of this Act, he, she, and they may appeal to any general or quarterly sessions of the peace to be held in and for the county, city, riding, borough, town, shire, division, liberty, or place in which the parish shall be situated; and all such appeals shall be subject to the same rules, regulations, provisions, and directions, and shall be prosecuted and proceeded with in the like manner, as appeals against rates made for the relief of the poor in such parish.

LXVIII. *Plaintiffs are not to recover in any action after tender of sufficient amends.*

LXIX. *Limitation of actions.*

Proceedings not to be unlawful for want of form.

LXX. And be it further enacted, That no proceedings to be had and taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by certiorari, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster or elsewhere.

LXXI. *Parishes may adopt only parts of Act.*

Limiting the powers of the Act.

LXXII. And be it further enacted, That nothing in this Act contained shall be construed to extend to abridge, repeal, alter, amend, or interfere with the powers and provisions contained in an Act made and passed in the tenth year of the reign of his late Majesty, King George the Fourth, intituled "An Act for improving the Police in and near the Metropo- 10 Geo. 4, c. 44.

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lis," or to extend to any parish or place already regulated by or under the provisions of any Act of Parliament for all the purposes hereinbefore provided for, or to interfere *with the powers which any corporate body may have with respect to watching and lighting.*

LXXIII. *Parts of parishes may adopt the provisions of this Act; but not to interfere with any local Act.*

LXXIV. *Surveyor of commissioners of sewers may enter into gas works, to see if there be any escape of gas, &c.*

LXXV. *Not to prejudice the rights of the commissioners of sewers.*

Construction of Act.

LXXVI. *Nor to affect the Universities.*

LXXVII. And be it further enacted, That the powers given to watch and light any parish shall be understood to be given to any wapentake, division, city, borough, liberty, township, market town, franchise, hamlet, tithing, precinct, and chapelry, or parts within the same; and that where the word "parish" is used it shall be understood to extend to any parts within the same; and that the powers given to a churchwarden shall be understood to be given to any chapelwarden, overseer, or other person usually calling any meeting on parochial business; and that the words "justice of the peace" shall be understood to mean justices of the peace for the county, city, borough, town, division, riding, shire, liberty, or place in which the parish which may adopt the provisions of this Act shall be situate; and the word "rate payer" to include all persons assessed to and paying rates for the relief of the poor.

Public Act.

LXXVIII. And be it further enacted, That this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded.

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3 & 4 VICT. CAP. 47.

An Act to repeal so much of an Act of the Ninth Year of the Reign of her late Majesty Queen Anne as prevents the Re-election of Mayors of parliamentary Boroughs. and other annual Returning Officers. [*4th August*, 1840.]

9 Anne, c. 20.

WHEREAS by an Act passed in the ninth year of the reign of her late Majesty Queen Anne, intituled "An Act for rendering the Proceedings upon Writs of Mandamus and Informations in the Nature of a Quo Warranto more speedy and effectual, and for the more easy trying and determining the Rights of Offices and Franchises in Corporations and Boroughs," after reciting that "in divers counties, boroughs, towns corporate, and cinque ports, where the mayor, bailiff, or other officer or officers to whom it belonged to preside at the election, and make return of any member to serve in Parliament,

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ought to be annually elected, the same person had been re-elected into such office for several years successively, which had been found inconvenient," it was enacted "that no person or persons who had been or should be in such annual office for one whole year, should be capable to be chosen into the same office for the year immediately ensuing; and that where any such annual officer or officers should be to continue for a year, and until some other person or persons should be chosen and sworn into such office, if any such officer or officers should voluntarily and unlawfully obstruct and prevent the choosing another person or persons to succeed into such office at the time appointed for making another choice, he or they should forfeit one hundred pounds for every such offence, to be recovered, with costs of suit, by such person as would sue for the same, in any of her Majesty's courts of record before mentioned, by action of debt, bill, plaint, or information, wherein no essoign, protection, or wager of law should be allowed, nor any more than one imparlance; one moiety thereof to her Majesty, her heirs and successors, and the other moiety to him or them that would sue for the same:" and whereas such provision has now become unnecessary and inexpedient: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much of the said Act of the ninth year of the reign of her late Majesty Queen Anne, as is hereinbefore recited, shall be and the same is hereby repealed.

Provision in recited Act repealed.

II. And be it enacted, That no person who shall before the passing of this Act have been re-elected into any office by virtue of which it belongs to him to preside at any election or make return of any member to serve in Parliament shall be deemed to have been incapable of being chosen into such office, or be liable to have his right to exercise such office questioned, by reason of so much of the said recited Act as is hereby repealed.

Election of the returning officers re-elected not to be questioned under the above provision.

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6 & 7 VICT. CAP. 67.

An Act to enable Parties to sue out and prosecute Writs of Error in certain Cases upon the Proceedings on Writs of Mandamus. [22*nd August*, 1843.]

WHEREAS writs of mandamus are issued by her Majesty's Court of Queen's Bench and the courts of the counties palatine, and the application for the same must now be made in those courts respectively alone: And whereas writs of mandamus are frequently awarded, and often in cases of considerable importance, and the practice of issuing such writs

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hath of late very much increased: And whereas it is expedient that parties interested in the issuing of or in the proceedings upon such writs respectively shall be enabled in certain cases to have the judgments and decisions of the said Court of Queen's Bench, and courts of the counties palatine respectively, in respect of the said writs and of the proceedings thereon, reviewed by a court of error, if they shall so think fit, and that a certain mode of effecting the same shall be ordained and established: And whereas by a certain Act made and passed in the ninth year of the reign of Queen Anne, intituled "An Act for rendering the Proceedings upon Writs of Mandamus and Informations in the Nature of a Quo Warranto more speedy and effectual, and for the more easy trying and determining the Rights of Offices and Franchises in Corporations and Boroughs," it was enacted, amongst other things, that in certain cases therein mentioned, when a writ of mandamus should issue, and a return should be made thereunto, it should be lawful for the person suing or prosecuting such writ to plead to or traverse all or any of the material facts contained within the said return, to which the person making such return should reply, take issue, or demur, and such further proceedings in such manner should be had therein for the determination thereof as might have been had if the person suing such writ had brought his action on the case for a false return: And whereas by an Act passed in the first year of the reign of the late King William the Fourth the said provision hereinbefore mentioned of the said herein first-recited Act was extended to writs of mandamus in all other cases, and to the proceedings thereon: And whereas in neither of the said recited Acts, nor in any other Act, is any power or authority given to the person prosecuting such writ of mandamus to demur to the return made to any such writ, so that the decision of the said courts respectively as to the validity of such return could be reviewed by a court of error; for remedy whereof, therefore, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all cases in which the person prosecuting any such writ heretofore issued or hereafter to be issued shall wish or intend to object to the validity of any return already made or hereafter to be made to the same, he shall do so by way of demurrer to the same, in such and the like manner as is now practised and used in the courts hereinbefore mentioned respectively in personal actions; and thereupon the said writ and return and the said demurrer shall be entered upon record in the said courts respectively, and such and the like further proceedings shall be thereupon had and taken as upon a demurrer to pleadings in personal actions in the said courts respectively; and the said courts respectively shall thereupon adjudge either that the said return is valid in law,

9 Anne. c. 20.

1 Will. 4, c. 21.

In order to object to a return to a mandamus, the prosecutor must demur.

Proceedings thereupon.

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or that it is not valid in law, or that the writ of mandamus is not valid in law; and if they adjudge that the said writ is valid in law, but that the return thereto is not valid in law, then and in every such case they shall also by their said judgment award that a peremptory mandamus shall issue in that behalf, and thereupon such peremptory writ of mandamus may be sued out and issued accordingly, at any time after four days from the signing of the said judgment; and it shall be lawful for the said courts respectively, and they are hereby required, in and by their said judgment to award costs to be paid to the party in whose favour they shall thereby decide by the other party or parties.

Writ * of error upon the judgment.

II. And be it enacted, That whenever any such judgment as is hereinbefore mentioned shall be given, or whenever issue in fact or in law shall be joined upon any pleadings in pursuance of the said recited Acts or either of them, and judgment shall be given thereon by any of the courts aforesaid, it shall be lawful for any party to the record in any of such cases, who shall think himself aggrieved by such judgment, to sue out and prosecute a writ* of error for the purpose of reversing the same, in such manner and to such court or courts as a party to any personal action in the said court may now sue out and prosecute a writ of error upon the judgment in such action; and such and the like proceedings shall thereupon be had and taken, and such costs awarded, as in ordinary cases of writs of error upon judgments of the said courts respectively in personal actions; and if the judgment of such court be reversed by the court of error, the said court of error shall thereupon by their judgment not only reverse the same, but shall also in addition thereto give the same judgment which the court whose judgment is so reversed ought to have given in that behalf; and if by their said judgment they shall award that a peremptory writ of mandamus shall issue, the same shall and may accordingly be issued by the proper officer in the office from which such writs issue, as the case may be, upon production to him of an office copy of the said judgment of the court of error, which shall be his authority and warrant for so doing: Provided always, that bail in error to the amount of fifty pounds, or such other sum as may by any rule of practice be appointed as hereinafter provided, shall be duly put in within four days after the allowance of the said writ of error, and the same shall afterwards be duly perfected according to the practice of the court wherein the said original judgment was given, otherwise the plaintiff in error shall be deemed to have abandoned his writ of error, and the same shall not be further prosecuted.

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* See now as to the form of proceedings in error (the writ of error being abolished), 15 & 16 Vict. c. 76, s. 148 *et seq.*

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Peremptory writ of mandamus.

III. And be it enacted, That no action, suit, or any other proceeding shall be commenced or prosecuted against any person or persons whatsoever for or by reason of any thing done in obedience to any peremptory writ of mandamus issued by any court having authority to issue writs of mandamus.

Court of error may make rules.

IV. And be it enacted, That the said courts of error who are hereby empowered to take cognizance of the matters aforesaid may make, and they are hereby directed to make, from time to time and as often as they shall see occasion, such rules of practice in reference to the said application and the proceedings thereon, and in reference to the writs of error hereinbefore mentioned and the proceedings thereon, and the amount of bail to be taken, as the said courts respectively may deem necessary to effectuate the intention of this Act in relation to the same respectively.

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15 & 16 VICT. CAP. 81.

An Act to consolidate and amend the Statutes relating to the Assessment and Collection of County Rates in England and Wales. [30*th June*, 1852.]

WHEREAS it is expedient that the laws relating to the assessing and collection of county rates should be amended, and that the statutes now in force relating to that subject should be consolidated into one Act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

I. That from and after the passing of this Act so much of an Act passed in the twelfth year of the reign of his late Majesty King George the Second, intituled *An Act for the more easy assessing, collecting, and levying of County Rates*, as provides the mode of assessing and collecting county rates, and so much of an Act passed in the thirteenth year of his said late Majesty, intituled *An Act to continue several Laws therein mentioned, for punishing such Persons as shall wilfully or maliciously pull down or destroy Turnpikes, for repairing Highways, or Locks or other Works erected by Authority of Parliament for making Rivers navigable*, and for other purposes, as extended the powers of justices of the peace of counties touching county rates to the justices of the peace of such liberties and franchises as have commissions of the peace within themselves, and an Act passed in the thirty-seventh year of the reign of his late Majesty King George the Third, intituled *An Act for empowering the Justices of the Peace for the County of Middlesex, at their General or Quarter Sessions of the Peace, to make a fair and equal County Rate for the said*

Repeal of 12 Geo. 2, c. 29.

13 Geo. 2, c. 18.

37 Geo. 3, c. 65.

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County, and an Act passed in the fifty-fifth year of the reign of his said Majesty, intituled *An Act to amend an Act of his late Majesty King George the Second, for the more easy assessing, collecting, and levying of County Rates*, except as to the provision in the said Act, clause seventeen, relating to the allowance to the county treasurer, and an Act passed in the fifty-sixth year of the reign of his said Majesty King George the Third, intituled *An Act to explain and amend an Act passed in the last Session of Parliament, for the more easy assessing, collecting, and levying of County Rates*, and an Act passed in the fifty-seventh year of his said late Majesty, intituled *An Act to amend an Act of the last Session of Parliament, for the more easy assessing of County Rates*, and an Act passed in the session of Parliament holden in the first and second years of the reign of his late Majesty King George the Fourth, intituled *An Act to explain and amend several Acts relating to the assessing, levying, and collecting the County Rates*, and an Act passed in the first year of the reign of his late Majesty King William the Fourth, intituled *An Act to alter and amend the several Acts now in force for the assessing, collecting, and levying of County Rates, so far as the same relate to the County of Middlesex*, and an Act passed in the session of Parliament holden in the fourth and fifth years of the reign of his said late Majesty King William the Fourth, intituled *An Act to regulate the Expenditure of County Rates and Funds in aid thereof*, and an Act passed in the session of Parliament holden in the eighth and ninth years of the reign of her present Majesty Queen Victoria, intituled *An Act to amend the Laws relating to the assessing of County Rates*, and also so much of the Act passed in the session of Parliament held in the twelfth and thirteenth years of her Majesty, intituled *An Act to provide a more convenient Mode of levying and collecting County Rates, County Police Rates, and District Police Rates in Parishes situated partly within and partly without the Limits of Boroughs which are not liable to such Rates*, as provided that the overseers of parishes or places separately maintaining its own poor, and divided in the manner in the said Act mentioned, should collect the county rates leviable on the part of the parish or place not comprised within the borough, shall be and the same are hereby repealed, save and except so far as they or any of them repeal any other Act, and save also so far as they or any of them provide for or relate to any matter or thing other than the county rate.

55 Geo. 3, c. 51.
56 Geo. 3, c. 49.
57 Geo. 3, c. 94.
1 & 2 Geo. 4, c. 85.
1 Will. 4, c. 48.
4 & 5 Will. 4, c. 48.
8 & 9 Vict. c. 111.
12 & 13 Vict. c. 65.

II. From and after the passing of this Act, it shall be lawful for her Majesty's justices of the peace of every county in England and Wales, assembled at their general or quarter sessions of the peace or at any adjournment thereof, from time to time, as often as they may deem it necessary, to appoint any number of justices, not exceeding eleven in number nor less than five, to be a committee for the purpose of preparing a basis or standard for fair and equal county rates,

Justices at sessions to appoint committees for preparing a basis or standard for assessing county rates.

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such basis or standard to be founded and prepared rateably and equally according to the full and fair annual value of the property, messuages, lands, tenements, and hereditaments rateable to the relief of the poor in every parish, township, borough, or place, whether parochial or extra-parochial, within the respective limits of the said justices' commissions, or which in any place within such limits not maintaining its own poor would be liable to be rated for the relief of the poor if such last-mentioned place were a parish, or of altering and amending such basis or standard from time to time as circumstances may require; provided that in counties containing or which may hereafter contain more than eleven petty sessional districts or divisions, the committee so appointed may be extended to a number equal to the number of petty sessional divisions, in order that one justice may be selected from the justices usually acting in each such petty sessional division, if the same shall appear convenient in the opinion of the justices appointing such committee.

Meetings of committee.

III. The committee so appointed shall hold their first meeting after their appointment at such time and place as shall be fixed by the said court of general or quarter sessions, and their subsequent meetings at such times and places as they shall themselves appoint for carrying this Act into execution; and at every meeting of the said committee, if three or more members thereof are present, they shall be competent to act, as fully and effectually as if all the members of the said committee were present.

Committee may appoint a clerk.

IV. Such committee may from time to time, as they may see fit, appoint a clerk to assist them in the execution of their duties under the provisions of this Act, and may at any time remove such clerk, and appoint another in his stead.

Committees may require returns of the annual value of the property in any parish liable to be assessed, with the date of the last valuation.

V. For the purpose of preparing such basis or standard for fair and equal county rates the said committee, by their order in writing, to be signed by their clerk, may from time to time, as often as they may deem it necessary, direct the overseers of the poor, constables, assessors, and collectors of public rates of or for any parish, township, borough, or place within the county, and all other persons having the custody or management of any public or parochial rates or valuations of any such parish, township, or place, to make returns in writing to the said committee, at such times and places as they may appoint, of the amount of the full and fair annual value of the whole or of any part of the property within the parish, township, or place liable to be assessed toward the county rate, together with the date of the last valuation for the assessment of such parish, and the name of the surveyor, or, if no surveyor, then the name or names of the person or persons by whom and the manner in which the said valuation was made; and the overseers of the poor required to make any such return in respect of any parish, township, or place maintaining its own poor, and the constable or other person

Such returns to be laid before a ves-

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required to make any such return in respect of any place not maintaining its own poor, shall, before they present the same to the said committee, lay the same before a vestry meeting of the parish, township, or place for which they act, or, where no vestry meeting is held, before some other meeting of the inhabitants of such place, if any such there be, at which the public business of such place is commonly transacted. Vestry meeting previous to their being presented to the committee.

VI. For the purposes of preparing any such basis or standard for assessing any county rate, the words "full and fair annual value" shall be taken to mean the net annual value of any property as the same is or may be required by law to be estimated for the purpose of assessing the rates for the relief of the poor. Meaning of "full and fair annual value."

VII. The said committee may from time to time, as often as they may deem it necessary, by their order in writing, signed as aforesaid, require the said overseers of the poor, constables, assessors, collectors, and any other persons whomsoever, to appear before them, when and where and as often as the said committee may deem expedient, and to produce all parochial and other rates, assessments, valuations, apportionments, and other documents in their custody or power relating to the value of or assessment on all or any of the property within the several parishes and places aforesaid which may be liable to be assessed toward the county rate, and to be examined on oath, and answer such questions as the said committee may put to them respectively touching the said rates, assessments, valuations, or apportionments, or the value of the property aforesaid; and the said committee shall be authorised and empowered to administer such oath, and to examine the parties upon oath as aforesaid; and moreover it shall be lawful for such committee in the like cases from time to time to cause copies of the total amount assessed in each parish, township, or place in respect of any aids or taxes payable to her Majesty, her heirs or successors, and the total amount of the valuation of the property on which such assessments were made in any year then elapsed, to be made out by the clerk to the commissioners of each district within the limits of the jurisdiction of such justices. Committees empowered to inspect rates, assessments, valuations, &c. 55 Geo. 3, c. 51.

VIII. Every overseer of the poor, constable, assessor, collector, or other person so required to make returns, or to appear as aforesaid, who shall, without any reasonable excuse, neglect to make such returns in writing as aforesaid, or wilfully make any false return, and every person who shall neglect or refuse to appear when required so to do as aforesaid, or to be sworn or examined, or to produce such documents as hereinbefore provided, shall forfeit a sum not exceeding twenty pounds, to be prosecuted for and recovered by order of the said committee before any two of her Majesty's justices of the peace. Penalty on overseers or others refusing to attend or produce documents.

IX. That the said committee may from time to time, and so often as they may think fit, by their order in writing, to Committees may cause new valua-

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tions to be made.

be signed as aforesaid, direct that the whole or any part of any parish, township, or place within the county shall be valued, and may appoint one or more person or persons to make such valuation; and the person or persons so appointed may at all reasonable times, and with or without assistants, enter upon, view, examine, survey, and measure all and any lands, houses, or other property within such parish, township, or place liable to be assessed toward the county rate, in order to ascertain the value at which the same ought respectively to be charged.

If parish officers, &c. neglect to make returns, or make false returns, expenses of valuations to be paid by parishes.

X. If any overseers or other persons neglect to make any such return in writing as aforesaid, or wilfully make any false return or statement of the amount of the full and fair annual value of the property within the parish, township, or place liable to be assessed towards the county rate, any court of general or quarter sessions of the peace, upon the report of the said committee, may order that the whole of the expenses incurred by the said committee in ascertaining the amount of the full and fair annual value of the same shall be charged upon the parish, township, or place of which the overseers or other persons have been guilty of such neglect or misconduct as aforesaid, in addition to the proportion of the county rate to be paid by such parish, township, or place; and such expenses shall be raised, levied, and collected by such and the like ways and means as county rate can or may be raised, levied, and collected, and shall be paid therewith, due distinction being made, in the case of every such additional assessment, between the sum or sums charged for any such expenses and the sum or sums assessed for the county rate.

Costs of valuations directed by committee.

XI. In any case where any committee appointed as aforesaid have directed the whole or any part of any parish, township, or place to be valued, and where, in the basis or standard of rate afterwards allowed and confirmed by any court of quarter session upon the report of such committee, such parish, township, or place is rated on a sum greater than the sum set forth in the returns made to such committee by the overseers of the poor, constable, or other person required to make such return in any place not maintaining its own poor, if there be no appeal made, and prosecuted with success, against the basis or standard for the rate on such parish, township, or place, at the quarter session holden next after such confirmation or allowance of such basis or standard, the justices of the peace at such session shall order the overseers, constable, or other person as aforesaid of such parish, township, or place to pay the amount of the expenses incurred in making such valuation; and in any such case as aforesaid, if there be an appeal to the justices of the peace at any quarter session against such basis or standard, on the ground that such parish, township, or place is rated on a sum beyond the fair annual value of the property therein, and if on such ap-

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peal such basis or standard is confirmed as to such parish, township, or place, or if it be not reduced to or below the sums set forth in the returns made to such committee as aforesaid, the justices of the peace at such session shall order the overseers, constable, or other person as aforesaid of such parish, township, or place to pay the amount of the expenses incurred in making the valuation under the direction of the committee; and such expenses shall be raised, levied, and collected by such and the like ways and means as county rate can or may be raised, levied, and collected, and shall be paid therewith, due distinction being made, in the case of every such additional assessment, between the sums charged for or on account of any such expenses and the sum or sums assessed as and for the county rate.

Allowances and compensation to persons employed in the execution of this Act.

XII. The said committee from time to time may make such allowances and compensations to their clerk, and to the overseers, constables, collectors, surveyors, and other persons employed in the execution of this Act, as to them shall appear reasonable and proper, which, together with the costs of printing and other expenses necessarily incurred by the said committee in or about the preparing or amending any such basis or standard for county rates, shall be paid, by an order of the court of general or quarter sessions of the peace, out of the county stock.

When committee have prepared a basis for a county rate differing in value from the preceding, they shall cause it to be printed, and distributed to the acting justices and overseers of the poor.

Overseers to submit the proposed basis to a vestry meeting.

XIII. When and so soon as the committee appointed as aforesaid have prepared any such basis or standard of county rate in which the total amount of the annual value of the property in any parish or place within the county is estimated at a greater or less amount than in the last-preceding basis or standard, they shall cause such last-prepared basis or standard to be printed in such form as they may think proper, and shall forthwith cause to be sent, by the general post or otherwise, one copy of the same to every acting justice of the peace for the county, and to the overseers of the poor, constables, or other persons charged with the collection or levy of the county rate in every parish and place within such county; and such overseers of the poor, constables, or other persons shall, within twenty-one days after the receipt of such copy, call a vestry or other meeting of such parish or place, and shall submit the said copy to such meeting; and any person rated to the relief of the poor, or liable to contribute to the county rate, in such parish or place, may at all reasonable times inspect and examine the said copy whilst the same remains in the custody of any such overseer, constable, or other person, and take extracts or copies therefrom, without the payment of any fee for the same.

Notice of the time within which objections may be made to the proposed

XIV. Together with the copy of such proposed basis or standard there shall also be sent by the said committee to the overseers of the poor or constable of every such parish or place, or other person as aforesaid, a notification of a reasonable time, not less than one calendar month after the date of

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basis to be sent to the overseers.

such notice, within which any objections to the proposed basis or standard may be forwarded to the said committee by such overseers or constable, or other person as aforesaid, or by any person affected by such basis or standard; and the said committee shall fix and give due notice of a time and place when and where such objections will be taken into consideration by the said committee, and for hearing the parties making such objections.

Notice to be given when basis will be taken into consideration by court o general or quarter sessions.

XV. When any proposed basis or standard for a county rate has been finally corrected and approved of by the said committee, they shall lay the same before the court of general or quarter sessions holden next thereafter, and such court shall thereupon order public notice to be given, in one or more of the newspapers usually circulated within the county, that such basis or standard will be taken into consideration at the then next general or quarter sessions of the peace to be held for the said county; and at such last-mentioned general or quarter session of the peace the court shall proceed to take the same into consideration, and to alter and amend the same as to them may seem proper, and, if they think fit, to allow and confirm the said basis or standard, or, instead of making any alteration in the said basis or standard, or of allowing and confirming the same, to refer back the said basis or standard for amendment to the said committee, and to adjourn the consideration thereof to some future general or quarter session of the peace, or any adjourned quarter session; and in such last-mentioned case the said committee shall have the same powers and authorities for requiring returns and ascertaining the value of property liable to be assessed toward the county rate, in order to the revising or amending of the said basis or standard so referred, as are hereinbefore given to them for preparing the same; and all the clauses and provisions herein-before contained for preparing any basis or standard shall be applicable in every respect to the revision or amendment of the same; and any amendment or alteration by the said committee of such basis or standard so referred shall be reported and taken into consideration at the general or quarter session of the peace, or any adjourned quarter session to which the consideration thereof was adjourned; but before any such alteration or amendment made by the said committee of the said basis or standard so referred be allowed or confirmed by the court of general or quarter session of the peace or adjourned quarter sessions, the said committee shall send at least fourteen days previous notice thereof, by post or otherwise, to every parish and place with respect to which such alteration or amendment is made.

Basis to be deemed valid after confirmation by court of

XVI. When the court of general or quarter session or adjourned quarter session of the peace have so allowed and confirmed any basis or standard for a county rate, the same shall be taken to be made and established, and shall be valid, legal,

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and effectual, to all intents and purposes, notwithstanding any irregularity may have arisen in the making thereof, and notwithstanding the officers of any parish or place may have omitted to make the returns herein-before mentioned, subject nevertheless at all times to appeals against the same, as herein-after provided; and the said court shall cause copies of the said basis or standard, after allowance and confirmation, to be printed, and shall direct one of such copies to be sent to every acting justice of the peace for the county, and one copy to the overseers of the poor, constable, or other person charged with the collection and levy of the county rate in every parish and place within the said county; and such basis or standard, so confirmed, shall be deemed and taken to be the basis or standard and the proportion in which all assessments of the county rate shall thenceforth be made, subject to such alterations as may be necessary in consequence of any appeal, or the recommendation of the county rate committee, as herein-after enacted: Provided always, that any basis or standard now in force or hereafter to be allowed and confirmed shall continue to be in force and to be acted upon, subject to any alteration to be made by reason of any appeal or otherwise, as in this Act provided for such alteration, until a new basis or standard for a county rate shall have been made and established under this Act. General or quarter sessions.

XVII. If at any time after the said basis or standard has been allowed, confirmed, and made as aforesaid, any overseer or overseers of the poor, or other person charged with the collection and levy of county rate in any parish or place, or inhabitant or inhabitants thereof, have reason to think that such parish, township, or place is aggrieved by any such basis or standard, whether it be on account of some one or more of such parishes, townships, or places being without sufficient cause omitted altogether from the said basis or standard, or on account of such parish, township, or place being rated on a sum beyond the full and fair annual value of the property therein liable to be assessed toward the county rate, or on account of some other parish or parishes, township or townships, place or places, being rated on a sum less than the full and fair annual value of the property therein liable to be assessed toward the county rate, such overseer or overseers of the poor, constable, or other person, or inhabitant or inhabitants, may appeal to the justices of the peace for the county at any quarter sessions to be holden after the sessions at which such basis or standard was allowed and confirmed, against such part only of the said basis or standard as may affect the parish or parishes, township or townships, place or places which appear to be over-rated or under-rated, or omitted altogether from the said basis or standard as aforesaid (subject to the provisions hereinafter contained); and if in any case where any overseer or overseers, constable, or other person as aforesaid of one parish or place appeals Appeal against basis. Notice of appeal.

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against he basis or standard of rate on any other parish or place, on account of the same being altogether omitted from such basis or standard, or on account of the same being rated at less than the full and fair annual value thereof as aforesaid, such overseer or overseers, constable, or other person shall give twenty-one days notice in writing previous to the first day of the said session at which such appeal shall be made, of the intention to appeal, and of the cause and matter thereof, to the overseers of the poor, or where there are no such overseers to the person charged with the collection and levy of county rate in such other parish or place, and if in any case where any such overseer or overseers, constable, or other person appeal against the said basis or standard on the ground that any parish, township, or place is rated on a sum beyond the full and fair annual value of the rateable property therein, such overseer or overseers, constable, or other person shall give twenty-one days notice thereof in writing, with the cause and matter thereof, to the clerk of the peace of the county, the said justices shall be empowered to hear and determine such appeal in manner by this Act directed, and either to confirm such parts of the basis or standard as have been appealed against, or to correct such inequalities or omissions as shall be proved to exist therein, in such manner as to them the said justices may appear fair, just, and equitable; but no such basis or standard shall upon any appeal be quashed or destroyed, in regard to any other parish, township, or place, unless in cases where the justices of the peace in quarter sessions assembled, or the major part of them, deem it necessary to proceed to the making of an entire new basis or standard, and where they proceed therein according to the provisions of this Act.

Hearing and determining appeals.

XVIII. It shall be lawful for the court of quarter session of the peace, upon any such appeal, instead of hearing the said appeal, to adjourn the same, and to order, upon the application of the appellant or respondent in such appeal, a survey and valuation of any of the parishes, townships, or places, or any parts thereof, in respect of or relating to which any such appeal shall be made, and to fix the next or some subsequent session for receiving such survey and valuation, and for hearing and determining the said appeal, and such court shall also thereupon appoint a proper person or persons to make such survey and valuation; and the person or persons so appointed shall for that purpose have full power, with or without assistants, to enter upon, view, and examine, survey, measure, and value all and any lands, houses, and property liable to be assessed toward the county rate within the parishes, townships, and places mentioned in such order; and such survey and valuation shall be reported to the quarter session, or adjournment, fixed as aforesaid for receiving the same; and the court then and there assembled shall hear and determine the said appeal in the manner herein-before set forth.

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Sessions to determine costs of appeal and of valuation ordered by sessions.

XIX. The charges and expenses of and attending any survey and valuation ordered to be made by any court of quarter sessions in such appeal as aforesaid shall be deemed costs in such appeal, and abide the event thereof; and the court before which any such appeal is heard and determined may order the costs in and about such appeal to be paid by either party, appellant or respondent, as they in their discretion may think fit; but where any appeal is made on the ground that any parish, township, or place is rated on a sum beyond the full and fair annual value of the property therein, if the court before which such appeal is heard determine in favour of the appellants, such court shall ascertain the costs and charges incurred by such appellants in and about such appeal, and shall order the treasurer of the county rates to pay the same to such appellants out of the public stock of the county in his hands.

Committee may revise basis or rate from time to time.

XX. Although no appeal shall be made as aforesaid, it shall be competent to any committee appointed as hereinbefore provided, and upon being so required by the court of general or quarter sessions, from time to time to revise any such basis or standard for a county rate being then in force in any county, for the purpose of meeting any partial changes that may have occurred in the rateable value of portions of the property liable to be assessed, and to call for information, and to exercise all the powers hereinbefore authorised, and if, after due inquiry and investigation, it shall seem fit to such committee to alter such basis or standard, they shall forthwith give notice in writing of such alteration to any parish or place whose basis or standard they propose to alter, whether by diminishing or increasing it, and shall, upon some day to be named in such notice, hear and decide upon any objection that may be made by any person on behalf of such parish or place; and upon the decision of such committee as aforesaid to alter such basis or standard, they shall report such alteration to the next or some subsequent general or quarter sessions, having given to each parish or place whose basis or standard is altered by such report notice thereof in writing not less than ten days previous to such sessions, and the justices assembled thereat, after hearing the objections, if any, that may be made by any person duly authorised to represent any such parish or place, may make such order as to them shall appear just for ascertaining and deciding upon such proposed alteration, and any order so made shall be binding upon all parties concerned.

Justices in general or quarter sessions to make a fair and equal county rate, whenever circum-

XXI. From and after the passing of this Act, it shall be lawful for the justices of the peace of the several counties or divisions of counties in England and Wales, assembled at their general or quarter sessions, or at any adjournment or adjournments thereof, and they are hereby authorised and empowered, whenever circumstances shall appear to require it, to order and direct a fair and equal county rate to be

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stances appear to require it.

made, for all the purposes to which the county stock or rate is now or shall hereafter be made liable by law, according to the basis or standard for the time being in force in such county or division of a county; and for that purpose to assess and tax every parish, township, and other place, whether parochial or extra-parochial, within the respective limits of their commissions, or within such divisions, rateably and equally, according to a certain pound rate (to be from time to time fixed and publicly declared by such justices), upon the basis or standard hereinbefore mentioned, of the full and fair annual value of the property, messuages, lands, tenements, and hereditaments rateable to the relief of the poor therein, or which in any place not maintaining its poor would be liable to be rated for the relief the poor if the said last-mentioned place were a parish, any law or statute to the contrary thereof notwithstanding; and the justices of the peace shall in all cases where the same may be necessary appoint proper persons within such extra-parochial or other places for the assessing, taxing, and rating such extra-parochial property, messuages, lands, tenements, and hereditaments, and levying, collecting, and paying over such assessment, taxes, or rates.

Parishes aggrieved may appeal.

XXII. If the churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants of any parish, township, or place, whether parochial or otherwise, where there is no churchwarden or overseer, or person appointed to act as such, shall at any time thereafter have reason to think that such parish, township, or place is aggrieved by any rate or assessment now existing, or hereafter to be made upon the basis or standard hereinbefore mentioned, either in pursuance of this Act or of any Act or Acts now in force, whether it be on account of the proportions assessed upon the respective parishes, townships, or places being unequal, or on account of some one or more of them being without sufficient cause omitted altogether from the rate, or on account of such parish, township, or place being rated at a higher proportion of the pound sterling according to the fair annual value of the rateable property therein, or on account of some other parish or parishes, township or townships, place or places being rated at a lower proportion of the pound sterling according to the fair annual value of the rateable property therein than has been fixed and declared by the justices of the peace of the said county in sessions assembled as the basis of the rate of the said county, or on account of the altered state of the value of the property assessed, or any part thereof, or shall have any other just cause of complaint whatsoever, it shall be lawful for such churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants where there is no churchwarden or overseer, or person appointed to act as such, to appeal to the justices of the peace for the

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county at the next quarter sessions of the peace after such cause of appeal shall have arisen, against such part of the rate only as may affect the parish or parishes, township or townships, place or places which are unequally rated, or which shall appear to be over-rated or under-rated, or omitted altogether from the rate: Provided always, that fourteen clear days notice in writing previous to the first day of such last-mentioned quarter sessions shall be given by the parties intending to appeal to the parties against whose rate the appeal is to be made, also to the clerk of the peace of the county, and the hundred constable, of the grounds of such appeal and the intention to try such appeal at such quarter session of the peace; and the said justices are hereby empowered to hear and finally determine the same, and either to confirm such parts of the rate as have been appealed against, or to correct such inequalities, disproportions, or omissions as shall be proved to exist therein, as well in respect of the basis or standard as in the assessment of the rate made thereon, in such manner as to them the said justices shall appear fair, just, and equitable, anything in this Act, or any former Act or Acts, or any law, usage, or custom, to the contrary thereof notwithstanding: Provided nevertheless, that upon such appeal no such rate shall be quashed or destroyed in regard to any other parish, township, or place, unless in cases where the justices of the peace of any county in quarter sessions assembled, or the major part of them, shall deem it necessary to proceed to the making of an entire new rate, and shall proceed therein, according to the provisions of this Act.

Rate to be raised, notwithstanding appeals, until determination of Justices.

57 Geo. 3, c. 94, s. 2.

In case justices order rate to be set aside, decreased, or lowered;

money paid subsequent to the time of appeal to be returned out of the general county rate.

XXIII. From and after the passing of this Act, the county rate or rates made upon any parish, township, or place (whether extra-parochial or otherwise) shall be paid, and shall and may be levied, recovered, and received, notwithstanding any appeal or appeals may have been made to the quarter sessions of the peace against any such rate or rates, and such rate or rates shall continue to be raised, levied, and received until the decision of the justices shall be made upon such appeal or appeals: Provided always, that if upon the hearing of any such appeal or appeals the court of quarter sessions of the peace shall order any rate or assessment to be set aside, decreased, or lowered, and it shall appear to the said court that any parish, township, or place have or hath, previously to the determination of such appeal or appeals, paid any sum or sums of money in consequence of such rates or assessments which ought not to have been paid or charged therein, then and in every such case the said court shall order such proportion of such sum or sums of money as shall have been so paid by any person or persons, parish, township, or place, subsequently to the notice which shall have been given of such last-mentioned appeal or appeals, to be repaid and returned to the person or persons, parish, town-

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ship, or place which have or hath paid the same respectively, out of the general rate of the county in which the cause of appeal shall have arisen.

Expenses of appeals or proceedings at law shall be paid in such proportions as the justices or courts of law shall award.

XXIV. Save as hereinbefore otherwise provided, in case of any appeals, actions, suits, or proceedings at law respecting anything done in pursuance of this Act, or any other Act or Acts relating to the county rate, the expenses of all such appeals, actions, suits, or proceedings at law shall be borne and paid by such respective parishes, townships, places, and persons, or such of them, and in such proportions, as the said justices shall, as they are hereby authorised to do, upon any appeal, in their quarter sessions award and order, or as such courts wherein such actions, suits, or proceedings shall be instituted shall, as they are hereby authorised to do, adjudge and order.

Costs may be awarded upon notices of appeal not prosecuted.

XXV. And for the more effectual preventing of frivolous appeals, be it enacted, that the justices of the peace in their quarter sessions assembled, upon proof before them there to be made of notice of any appeal having been given as hereinbefore authorised by any churchwarden or churchwardens, overseer or overseers, or other person or persons (though he or they did not afterwards prosecute such appeal), shall and may at the same sessions award and order to the party to whom such notice shall appear to have been given, such costs and charges as by the said justices in their discretion shall be thought reasonable and just to be paid by the churchwardens, overseers, or any other person by whom such notice shall have been given.

Justices of the peace shall send precepts directly to guardians of unions for the payment of county rates.

XXVI. When and as often as the justices of the peace within the respective limits of their commissions in England have made a county rate, a printed list of the parishes and places assessed to such rate, and the amount of the rateable value upon which each such parish and place shall have been respectively assessed, shall be sent to the overseers of the poor, constables, or other persons charged with the collection or levy of the county rate in every parish and place within the county, and such justices, assembled at their general or quarter sessions or at any adjournment thereof, shall order precepts in the form shewn in the schedule annexed to this Act, or as near thereto as may be, to be issued to the guardians of every union of parishes, of which union any parish is situate within such limits, stating the sum or sums assessed and charged for each such rate on each parish in the union, the whole of which parish is situate within such limits, and to the guardians of every single parish situate within such limits, stating the sum or sums assessed and charged on such parish for each such rate, and requiring the guardians of such union or parish respectively, within such time as may be limited in such precepts, to cause the aggregate of the said several sums so stated to be paid by them, out of the monies held by them on behalf of each such

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parish, to the treasurer of the county or place for which such justices act, and may cause such precepts to be sent, by post or otherwise, to such guardians; and such precepts shall have force in every such union, so far as concerns such parishes as are within the limits of the commission of the said justices, notwithstanding that the place of meeting of such guardians may not be situated within such limits, and without being endorsed with the signature of any justice of the peace having ordinary jurisdiction in the place of meeting of the guardians; and such guardians shall raise the monies required by such precepts to be paid in like manner as the money required by such guardians for the relief of the poor, and shall pay such monies at the time limited and in the manner prescribed by such precepts; and if the treasurer of such guardians, or any person on his or their behalf, tender to the treasurer of the county or place for which such justices act the aggregate of the said several sums, or if he so tender the whole sum assessed on any such parish or parishes in respect of any such rate or rates, together with a copy of such precept in which are specified the parish or parishes and the rate or rates in respect of which the same is so tendered, the treasurer of the county shall receive the sum so tendered, notwithstanding that the sums required to be paid on behalf of other of such parishes or of other of such rates be not then tendered, and shall give a receipt for the sum or sums received by him accordingly, but he shall not receive any sum on behalf of any such parish less than the whole of the sum assessed and charged thereon in respect of one such rate; and the receipt of the treasurer of such county or place shall be a good discharge for the payment of the sums specified in any such precept or of any of them.

Guardians to pay such rates.

County treasurer to receive the same.

XXVII. In case guardians do not pay within the time limited in such precept the sum or sums of money therein required to be paid on behalf of any parish, the said justices assembled as aforesaid may cause to be issued and sent, by post or otherwise, to the overseers of the poor of such parish, or to the petty constable or peace officer, or other person or persons empowered in any place to rate and levy the monies assessed at such county rate, warrants to collect and pay to the treasurer of the county or place in which such justices act, within a time to be named and limited in such warrants, the rate or rates charged on such parish or place respectively, together with an addition to such rate or rates in the proportion of one shilling to every ten; and such additional sum shall be applied and disposed of in like manner as the county rate; and such overseers of the poor, petty constables, peace officers, or other persons may reimburse themselves, as well for such additional sums as for the original amount of rate or rates, out of the monies which they are respectively empowered to rate and levy for the purpose of such county rate, but shall not receive or take from the county rate, or any

If the guardians fail to pay such rates, the justices may issue warrants to the overseers of parishes, &c. to pay the same.

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other rate, any allowance or compensation for their trouble or expenses incurred in collecting, levying, or paying such county rate.

If the overseers, &c. fail to pay, the justices may levy the rate by distress and sale.

XXVIII. If any overseer, petty constable, peace officer, or other person as aforesaid refuse, make default, or neglect to pay to the treasurer of the county or place within the time limited as aforesaid, the sum or sums of money specified in the said warrants, and if the clerk of the peace or treasurer of the county or place make complaint thereof, then any justice of the peace of such county or place may by warrant under his hand levy the same by distress and sale of the goods of the offender; and the justices assembled as aforesaid may pay to any clerk, constable, messenger, or other person who may have been employed in making such complaint, or in obtaining, drawing, or executing such warrant, such reasonable compensation out of the county stock as to the said justices may seem fit.

Parishes not in arrear with contributions to be reimbursed by those which are in arrear.

XXIX. In every case where any parish comprised in an union has, on or before the day on which any precept as aforesaid should be obeyed, contributed money sufficient to enable the guardians of the union to pay any sum or sums required by such precept in respect of such parish, as well as to provide for the immediate relief of the poor of such parish, and to satisfy all other obligations of the said guardians in respect of such parish in force on that day, and where, through the default of any other parish or parishes in the same union in contributing money to such guardians, or through the neglect of such guardians to demand sufficient contributions from any other parish or parishes in the same union, the said guardians have applied the money of such first-mentioned parish to the use of such other parish or parishes, and are thereby rendered unable to pay any money so required by such precept on behalf of such first-mentioned parish, and such parish is by reason thereof compelled to pay the additional sum of one shilling in every ten, as hereinbefore provided, in every such case the guardians of the union shall reimburse such first-mentioned parish such additional sum, and all costs incurred by reason of the premises, out of the monies of such other parish or parishes which may next thereafter come into the hands of such guardians; and in case more than one parish be in default as aforesaid, the said guardians shall charge such additional sum and costs to every such parish, in proportion to the amount of the deficiency of the contribution of each parish respectively on the day on which the said precept should have been obeyed.

Justices may issue precepts to the overseers of parishes, &c. not comprised in unions, or only part-

XXX. In the case of every parish not comprised within any union, and in which the laws for the relief of the poor are not administered by a board of guardians, and in the case of every parish comprised in a union the guardians of which are not empowered to relieve the poor, and in the case of any parish comprised within a union, or in which the laws for the

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relief of the poor are administered by a board of guardians, of which parish a part only is situated within the limits of the commission of any justices, for which part no separate rate is levied for the relief of the poor, or where there are no separate churchwardens or overseers of the poor, or where no separate or distinct rate is made and collected for the relief of the poor of any division or part of any parish, township, or place situated in and extending into two or more counties, ridings, or divisions, and in the case of every place not maintaining its own poor, but liable to the payment of county rates as aforesaid, the justices assembled as aforesaid may, so soon as any vacancy occurs in the office of high constable, issue their warrant to the overseers, petty constables, peace officers, or other persons empowered by law to rate and levy county rates in such parish, part of a parish, or place, to pay to the county treasurer, or to transmit to him in such manner as the said justices may from time to time direct, within a time limited in such warrant, the county rate, as aforesaid charged on them, without the agency or intervention of any high constable, and such justices may cause such warrant to be sent by post or otherwise; and in case the said overseers, petty constable, peace officer, or other person refuse or neglect to pay any such rate within the time limited in such warrant, the same remedy may be had against them as is hereinbefore provided against overseers, petty constables, peace officers, or other persons refusing, making default, or neglecting to pay to the treasurer of the county or place, within the time limited, the rate or rates charged upon any parish in union, and omitted to be paid by the guardians of such union, in compliance with the precept issued by the justices as aforesaid.

ly within the jurisdiction of the justices.

XXXI. Whereas there are several parishes, townships, hamlets, and places situated in and extending into two or more counties, ridings, or divisions having separate and distinct commissions of the peace, part of such parishes, townships, hamlets, and other places being situated in one county, riding, or division, and other part or parts thereof in another county or other counties, riding or ridings, division or divisions, and the messuages, lands, tenements, and hereditaments situated in such parishes, townships, hamlets, or other places are rateable to the relief of the poor therein, and to the county rates of the respective counties, ridings, or divisions in which such messuages, lands, tenements, and hereditaments are respectively situated, but the constables, churchwardens, and overseers are appointed for the whole of such parishes, townships, hamlets, or places, and it frequently happens that such constables, churchwardens, and overseers are resident in one division of such parishes, townships, hamlets, or other places, and that there are no constables, churchwardens, or overseers residing in the other division thereof, or within the limits of the jurisdiction of the justices making

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such county rate or rates, whereby considerable difficulties have in such cases arisen in raising the county rates in such divisions: for remedy whereof, be it enacted, That from and after the passing of this Act all and every the powers and provisions, clauses, pains, penalties, and forfeitures, given, granted, provided, made, or imposed by this Act, shall extend, and be deemed, construed, and taken to extend, to all cases and places as aforesaid where there are no separate churchwardens or overseers of the poor, or where no separate or distinct rate is made and collected for the relief of the poor of any such division or part of any parish, township, or place situated in and extending into two or more counties, ridings, or divisions as aforesaid; and that all and every the constables, churchwardens, and overseers of any such parishes, townships, hamlets, or other places as are situated in and extend into two or more counties, ridings, or divisions having separate and distinct commissions of the peace as aforesaid shall be subject to the precepts, warrants, orders, and directions of the several justices of the peace for the respective divisions or parts of such parishes, townships, hamlets, or other places, so far as the same may relate to the making of the returns hereinbefore required, and the assessing, levying, and collecting of the proportion of the county rate for such respective divisions or parts of such parishes, townships, hamlets, or other places, or otherwise to the execution of this Act, within the parts of such parishes, townships, hamlets, or other places as shall be situated within the limits of the jurisdiction of the justices making and issuing such precepts, orders, warrants, and directions, and shall be subject to the same fines, penalties, and forfeitures for neglect and disobedience of the precepts, warrants, orders, and directions of such justices, so far as the same shall relate to the matters aforesaid or any of them, or otherwise to the execution of this Act as such constables, churchwardens, and overseers, or other officers would by the laws now in force be subject and liable to if such constables, churchwardens, overseers, or other officers had resided within the limits of the jurisdiction of the justices making and issuing such precepts, warrants, orders, and directions: Provided always, that nothing herein contained shall extend, or be construed, deemed, or taken to extend, to authorise any justice or justices of the peace to act in the cases aforesaid or any of them beyond the limits of the jurisdiction within which he or they shall be generally appointed and authorised to act as such justices.

Powers of Act to extend to places where there are no separate churchwardens, &c. or where no separate or distinct poor rate is made for any place extending into two or more counties, &c.

Justices not to act beyond their jurisdiction.

XXXII. That where any parish or place separately maintaining its own poor shall be divided, so that a part is comprised in a borough not subject to contribute to the county rate, while the part out of the borough is liable to contribute thereto, and any county rate shall be assessable upon the part of the parish or place which is comprised within the county and excluded from the borough, the overseers of such

The overseers of parishes situated partly within boroughs and partly without to collect the county

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parish or place shall, on receipt of any precept or other lawful demand from the justices of the county, or other due authority in that behalf, demanding the payment of any sum of money as the contribution of the part of such parish or place out of the borough towards any such rate as aforesaid, with all convenient speed assess the sum so required upon the persons liable within such part of the parish or place to pay the poor rate therein, by means of a separate rate, to be made, allowed, and published in like manner as the poor rate, and either by themselves or by the collector of poor rates for the time being appointed for the said parish or place shall collect the same separately or with the poor rate payable by the parties assessed thereto, and for the purposes of assessing and collecting the same shall have all such powers, authorities, privileges, protections, and incidents as belong to them in the assessing and collection of the poor rate; and all provisions of the law for enforcing the collection of the poor rate, and recovering the costs of the proceedings therein, shall be applicable to the collection of the rate or rates herein last above mentioned and provided for.

Rates leviable on the part of the parish not comprised within the borough.

XXXIII. That any person assessed to any rate made under the authority of the provisions last hereinbefore contained may appeal against the same, in like manner, and with the like consequences in all respects, and subject to the same provisions and regulations, as in appeals against the poor rate; and that every overseer and collector shall account for the money levied, collected, and expended under the authority of this Act to the auditor of the district comprising such parish or place, in like manner as for the poor rate, and if any balance be found to be in his hands shall apply the same towards the next county rate required for the like purpose of this Act, or shall pay the same to his successor in office; and in default of his so applying the same while in office, or making payment to his successor within seven days after the balance shall have been found, such auditor shall proceed to recover the same from the person holding the same, in like manner as sums certified by him to be due from persons accounting shall from time to time be recoverable, and he shall be paid his costs and expenses, when not recovered from the defendant, by the then overseers of the parish or place, who shall be reimbursed out of the balance of such rate, or, if need be, out of the next rate.

Appeal against the rate, and audit of the accounts.

XXXIV. That where a precept shall be issued to the guardians of the union comprising any such parish or place, under the provisions in that respect hereinbefore contained, and such precept shall contain a sum to be assessed and charged in respect of any such rate as is herein provided for upon a part of such parish or place as aforesaid, the said guardians may require the overseers of such parish or place to pay to their treasurer a sum of money sufficient to enable the said guardians to pay the sum so assessed, with the other

Mode of procuring the funds when the precept is sent to the guardians of the union comprising the divided place.

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sums mentioned in the said precept, to the treasurer of the county or other person lawfully authorised to receive it; and the said overseers shall pay the amount out of any monies in their possession belonging to the parish or place, or to the part of such parish or place respectively, and reimburse themselves, if necessary, by a rate, to be levied as hereinbefore described, upon the persons liable thereto, or, if they have no such monies, shall forthwith proceed to levy and collect the requisite amount by such rate, and pay the same over to the treasurer of the said guardians: Provided nevertheless, that if such overseers make default, and do not make the requisite payment within the appointed time, they shall be subject to be proceeded against in like manner as the overseers of a parish wholly situated within the county are subjected to under the provisions of this Act.

Where the amount required for the county or other rate is small, the making of the rate for reimbursement may be postponed.

XXXV. That where the amount required in respect of any such county rate from any part of such parish or place as last aforesaid shall, in the judgment of such overseers, be so small as to render the levying and collecting of a separate rate for it inconvenient, the overseers may postpone the reimbursement of themselves for any such advance as aforesaid, and they or their successors may afterwards, on the recurrence of the next precept or other lawful demand, or of that next but one, levy and collect such a rate as aforesaid to raise the whole amount so previously advanced and unsatisfied out of the poor rates of the parish, as well as the amount required by the then precept or demand, and shall apply the sum so collected in reimbursement of the previous payments, and the satisfaction of such precept or demand, and shall apply the balance, if any, towards the discharge of the next precept or demand.

Mode of collection where the office of high constable has not become vacant.

XXXVI. Provided always, that in any county in which the office of high constable of any hundred shall be held for life, or during good behaviour, the collection of the county rate shall continue to be collected by means of such high constable, until any vacancy occurs in the office by the expiration of his appointment, or otherwise; and the precepts hereinbefore provided for the collection of such rate shall, as to the districts within which such high constable shall act, be directed to such high constable, ordering and requiring him to issue his warrants to the respective overseers of the poor within his division, to levy, collect, and pay to the said high constable, within the time to be named and limited in the warrant to be issued from the sessions as aforesaid, all such rate or rates, assessment or assessments so ordered to be paid, which each high constable shall and he is hereby directed and required to pay, at such time as shall be specified in such warrant, to the treasurer of the county for the time being, to be applied and disposed of in such manner and for such purposes as the county stock or rate is now applicable or may hereafter be made applicable by law; and in case any over-

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seer or overseers of the poor, or other person appointed to act as such, under the provisions of this Act, in any of the several parishes, townships, or places, whether parochial or otherwise, within the hundred or division for which the said high constable shall act, liable to pay the same, shall neglect, make default, or refuse to pay the same, within the time to be specified and limited as aforesaid, to the high constable of the division within which such overseer or overseers or other person or persons so liable and neglecting to pay shall reside or be appointed to act, it shall and may be lawful for any justice of the peace of the said county, upon complaint thereof made by any such high constable, by warrant under the hand and seal of any such justice, to levy the same by distress and sale of the offendor's goods; and the overseer or overseers of any parish, township, or place, whether parochial or otherwise, or other person or persons appointed to act as such overseer or overseers, shall and may and is and are hereby empowered to levy and raise, by an equal rate or assessment upon all and every the several estate and property rateable to the relief of the poor within their respective parishes, townships, or places, whether parochial or otherwise, such sum and sums of money as shall be required and necessary in order to raise the several sums assessed upon such parishes, townships, or places respectively, or to reimburse such overseer or overseers or other person or persons as aforesaid such sum or sums of money as they shall respectively have paid on account of the same, such rate or assessment to be paid by the occupier or occupiers for the time being of such estates and rateable property as aforesaid.

High constable to give security.

XXXVII. That the justices of the peace of the said several counties are hereby authorised and empowered to demand and take, whenever they shall think fit, good and sufficient security, to be approved of by the said justices in general or quarter sessions assembled, from the high constables employed in the collection and levying the rates; and that if any such high constable, upon being so called upon by the said justices, shall neglect or refuse to give such security as shall be approved by them, it shall then be lawful for the said justices of the peace in general or quarter sessions assembled to order and direct the churchwardens and overseers of the poor, or other persons appointed to collect and levy the rates of any parish, township, or place, to pay the quota which shall be assessed thereupon toward the county rate to the treasurer of the county, division, or place in which such parish, township, or place shall be situate; and the receipt of such treasurer shall be a sufficient discharge for the same.

Mode of enforcing repayment by borough treasurers of

XXXVIII. Whereas, by an Act passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled *An Act to provide for the Regulation of Municipal Corporations in England and Wales*, it is thereby en-

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money expended by counties out of the county rates as provided by 5 & 6 Will. 4, c. 76, ss. 114, & 117.

acted, that the treasurer of every county in England and Wales should keep an account of all costs arising out of the prosecution, maintenance, and punishment, conveyance and transport of all offenders committed for trial to the assizes in such county from any borough in which a separate court of quarter sessions of the peace should be holden, and likewise of all sums received in aid or on account of the county rate, and expended out of the county rate for other purposes than the costs before mentioned, and should, not more than twice in every year, send a copy of the said accounts to the council of every such borough, and should make orders on the council of every such borough for the payment of the sums chargeable upon the same, and the council of such borough should forthwith order the same, with all reasonable charges of making and sending the said account, to be paid to the treasurer of such county out of the borough fund: And whereas it is expedient to provide, as near as may be, one uniform remedy to recover county rates, and the orders of the county treasurer upon the councils of boroughs from the guardians or overseers and councils of boroughs respectively, when the same are not paid within a time limited: Be it therefore enacted, That it shall and may be lawful for any two justices of the peace for the county, upon the complaint or information of the treasurer of the same county, to be made or taken one calendar month after the issue of any order or orders upon the council of any borough by the same county treasurer, to cause to be issued and sent to the treasurer of any such borough a warrant ordering such borough treasurer to pay to the treasurer of the same county, over and besides the sum or sums mentioned in the first-named order or orders, the additional sums named in such warrant, the same being calculated in the proportion of one shilling to every ten on the respective sums named in the said original order or orders; and until payment thereof the county treasurer shall have, in respect of such warrants, all the powers for the recovery thereof, as are given against any guardian or overseer for the recovery of county rates and surcharges under and by virtue of this Act: Provided always, that nothing in this Act contained shall extend to render any such borough, or any property situated therein, liable to be assessed or to contribute to county rate, save as in the said recited Act is mentioned and contained, and as herein-before expressly provided.

Delivery of precepts, &c. by post, and evidence thereof.

XXXIX. Whenever precepts or warrants, as provided by this Act, are to be sent by post, the clerk of the peace shall send every such precept or warrant by post as a registered letter, according to the regulations of the postmaster-general in force for the time being in that behalf; and every precept or warrant delivered or tendered as a registered letter at the address of the person to whom it is addressed, whether a receipt be given for the same or not, shall be deemed to

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have been served on the person to whom the same was so delivered or tendered; and if delivered or tendered to the clerk or other like officer acting for any guardians, shall be deemed to have been served on the whole of such guardians; and if delivered or tendered to any one overseer of a parish, shall be deemed to have been served on the whole of the overseers of such parish.

Justices in general or quarter sessions to appoint justices to fix and determine boundaries between counties, ridings, divisions, or parts of counties, and other places of distinct and separate jurisdiction.

XL. The justices of the peace of counties, and ridings and divisions and parts of counties, and other places of distinct and separate jurisdiction, in that part of Great Britain called England, assembled at their several and respective general or quarter sessions of the peace, or at any adjournment thereof, shall be and they are hereby authorised and required, in any case in which any question or doubt does or shall exist or shall have arisen, or may in the judgment of the said justices be likely to arise, as concerning any boundary between any counties, ridings, divisions, or parts of any county, or other places of distinct and separate jurisdiction for which they respectively act as such justices, to nominate and appoint two justices of the peace of each such county, riding, division, or parts of any county, or other places of distinct and separate jurisdiction between which the boundary is required to be ascertained, for the purpose of fixing and determining such boundary, and the clerks of the peace, town clerks, and other proper officer of the several and respective general or quarter sessions of the peace at which such justices shall be appointed, shall forthwith give notice to each other and to such justices of such appointment, and the justices so appointed shall in every such case, as soon as may be after their appointment, meet and proceed to ascertain the boundary upon such evidence as can be obtained by them, or as they shall deem necessary for that purpose, either by examination of witnesses upon oath (which oath any one of the said justices is hereby empowered to administer), or of any maps, plans, surveys, or any other records, or documents, or in such other manner as they the said justices so appointed shall think requisite; and it shall be lawful for such justices, or for any person authorised under the hand of any three or more of such justices, to enter upon any lands, grounds, or premises, for the purpose of examining the same, or making any measurement, maps, or plans thereof, for the purposes aforesaid; and it shall be lawful for the said justices to summon any witnesses to be examined in that behalf, and to impose any penalty or forfeiture not exceeding ten pounds upon any witness who shall, without reasonable excuse, refuse or neglect to attend to be examined upon any such summons; and such justices shall thereupon fix, ascertain, and determine the boundary so referred to them to be ascertained, and shall cause the boundary so fixed and determined to be laid down on two maps or plans, to be signed by the said justices so appointed as aforesaid, which shall be depo-

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sited with the clerks of the peace, town clerks, or other proper officer for the counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction between which such boundary shall be so fixed and determined, and which maps and plans shall be kept amongst the records of their respective sessions, and shall be received as evidence of such boundaries; and such boundaries so fixed and determined shall be and be deemed the boundaries between the respective counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, for which the same shall have been so ascertained, for all the purposes of this Act, and the carrying the provisions thereof into execution, anything contained in any other Act or Acts of Parliament relating to such counties, ridings, divisions, or parts of such counties, or other places of distinct and separate jurisdiction, or any law, usage, or custom to the contrary notwithstanding.

Appointment of new justices.

XLI. If any of the four justices so appointed as aforesaid, or who shall be appointed in manner hereinafter mentioned, shall, before the execution of all the powers and authorities hereby in them respectively vested, die, decline, or refuse to act, or become incapable of acting, the justices of the peace of counties, ridings, divisions, and parts of counties, and other places of distinct and separate jurisdiction, assembled at their several and respective general or quarter sessions of the peace or at any adjournment thereof from which such justice so appointed or to be appointed shall die, decline, refuse to act, or become incapable of acting, shall and they are hereby authorised and required to appoint another justice in the room of him so dying, declining, refusing to act, or becoming incapable of acting as aforesaid, and so from time to time as often as any justice so to be appointed as last aforesaid shall die, decline, or refuse to act, or become incapable of acting; and every justice to be appointed as aforesaid shall have the like power and authority as the justice in whose place he shall be appointed was invested with by virtue of this Act; and that notice shall be given by the clerks of the peace, town clerks, or other proper officer to such justice of his appointment, in manner herein-before directed.

In case of difference between justices, a referee to be appointed to meet them and determine boundary.

XLII. If it shall happen that the justices so appointed to fix, ascertain, and determine the boundaries as aforesaid shall disagree in opinion touching the boundary between any county, riding, division, or parts of any county, or other place of distinct and separate jurisdiction, so referred to them under and by virtue of this or the said recited Act, and there shall be an equality of votes, so that the said justices cannot make any determination thereon, then and in such case the said justices, or the major part of them, shall forthwith appoint under their hands such person as they may think proper to act as referee, which person so appointed as referee shall, within twenty-one days from the receipt of such ap-

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pointment, fix a time and place to meet such justices; and at such meeting the said person so to be appointed as referee as aforesaid shall, together with the said justices to whom any boundary shall be referred to be ascertained as aforesaid, proceed to fix, ascertain, and determine the boundary about which such disagreement shall take place amongst them the said justices, in such and the same manner and with such and the like powers in all respects as herein-before expressed, and that the determination and decision of the said justices, and of the person whom they shall appoint as referee as aforesaid, or of the major part of them, shall be for ever binding and conclusive; and that the said justices, and the person whom they shall appoint as referee as aforesaid, or the major part of them, shall cause the boundary so fixed and determined to be laid down on two maps or plans, to be signed by the said justices and the person so appointed as referee as aforesaid, or by the major part of them, which shall be deposited with the clerks of the peace, town clerks, or other proper officer as herein-before directed, and kept amongst the records of their respective sessions, and shall be received as evidence of such boundaries; and such boundaries so fixed and determined shall be and be deemed the boundaries between the respective counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction for which the same shall have been so ascertained, for all the purposes of this and of the said recited Act, and the carrying the provisions thereof respectively into execution, anything contained in any other Act or Acts of Parliament relating to such counties, ridings, divisions, or parts of such counties, or other places of distinct and separate jurisdiction, or any law, usage, or custom, to the contrary notwithstanding.

Act not to determine any question of boundary, except for the purpose of rating.

XLIII. Nothing in this Act contained, nor any proceedings under the same, shall extend or be construed to extend to determine any question of boundary for any purpose except for the purpose of assessing, collecting, and levying rates according to the provisions of this Act and of the said recited Act.

Limitation of actions.

XLIV. No action or suit shall be brought, commenced, or prosecuted against any person or persons for anything done or to be done by virtue of or in pursuance of this Act after three calendar months next after the fact committed; and every such action shall be brought and laid in the county where the cause of action shall have arisen, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead, at his, her, or their election, this Act specially, or the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance or by the authority of this Act.

Penalty on persons ob-

XLV. Every person who in any manner wilfully resists or obstructs any overseer, collector, surveyor, or other person

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structing overseers, &c.

in the execution of his or their duty under this Act shall forfeit and pay any sum not exceeding five pounds, to be prosecuted and recovered before any two or more of her Majesty's justices of the peace for the county wherein the offence is committed.

Penalties and forfeitures, costs, and charges, may be levied by distress and sale of offender's goods.

XLVI. All penalties and forfeitures by this Act authorised to be imposed for any offence against the same shall, upon proof and conviction of the offences respectively before any two justices, as herein-before directed, either by the confession of the party offending, or by the oath of any credible witness or witnesses (which oath such justices are hereby authorised to administer), be levied, together with the costs attending the information, summons, and conviction, by distress and sale of the goods and chattels of the offender, by warrant under the hands of the justices before whom the party may have been convicted, or, on proof of such conviction, by a warrant under the hands of any two justices (which warrant such justices are hereby empowered and required to grant); and the overplus (if any), after such penalties and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels; and if upon the return of such warrant it appear that no sufficient distress can be had thereupon, then it shall be lawful for any such justices as aforesaid, by warrant under their hands, to cause such offender to be committed to the common gaol or house or correction of the county where the offender may be or reside, there to remain without bail or mainprize for any term not exceeding three calendar months, unless such penalties and forfeitures, and all reasonable charges attending the same, be sooner paid and satisfied; and the said penalties and forfeitures, when recovered, shall be paid to the treasurer of the county in which such offence may have been committed or forfeiture incurred, to be applied in aid of the rates of the said county.

Committal.

Application of penalties.

Counties where rates have been regulated by particular Acts authorised to make use of the provisions of this Act.

XLVII. And whereas several Acts have passed and are now in force empowering the justices of the peace of certain counties to make fair and equal county rates within their respective counties: Be it hereby enacted, That it shall and may be lawful to and for the said justices respectively, and they are hereby empowered, at any time and at all times after the passing of this Act, to proceed in the assessing, levying, and collecting and enforcing the payment of the county rate, and in all matters relating to the equalizing the same, either under the authority and according to the provisions and enactments of this Act, or under the authority and according to the provisions and enactments of the particular Acts affecting their respective counties, as to them shall seem fit and proper, in all cases in which the provisions and enactments of this Act are not inconsistent with the provisions and enactments of such particular Acts.

All business

XLVIII. That from and after the passing of this Act all

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business appertaining to the assessment, application, or management of the county stock or rate, or of any fund or funds used or applied in aid thereof or contributory thereto, or to any matter or things whereby or in respect whereof the said county stock or rate is or may be chargeable by law, which by any statute or statutes now in force the justices of the peace for that part of Great Britain called England are authorised and directed to do and transact at the general or quarter sessions, or at any adjournment thereof, shall be done and transacted publicly and in open court at such general or quarter sessions, or adjournment thereof, and not otherwise; and that no order of such justices relating to the matters aforesaid shall be binding or effectual unless the said order shall have been made and the business relating thereto shall have been done and transacted publicly and in open court as aforesaid.

relating to the assessment and application of county rate shall be transacted in open court.

XLIX. That public notice shall be given, in two newspapers generally circulating in the county, of the time of holding the general or quarter sessions, or any adjournment thereof, at least two weeks before the time of holding the same, and also of the day and hour at which the business relating to the assessment, application, or management of the county stock or rate will commence at such sessions.

Notice thereof to be given.

L. That the several treasurers of counties or of divisions of counties shall and they are hereby required, on or before the first day of January in every year, to send to the several clerks of the guardians of every union of parishes within the county or division of the county, and also to publish, in one or more of the newspapers usually circulating in the county or division of the county in which they respectively act, a true and accurate abstract of the account of their receipts and expenditures, under their several heads, for the year ending on the twenty-ninth day of September immediately preceding the publication of such abstract, signed by the justices of the peace who shall have audited the same; and the abstracts of such accounts, made out according to a form to be settled by one of her Majesty's principal secretaries of state, shall, after they have been submitted to and approved by the several courts of quarter sessions respectively, be transmitted by the clerks of the peace of the respective counties or divisions of counties to such secretary of state; and a copy of every such abstract shall be laid before both Houses of Parliament within six weeks after the receipts of the same by such secretary of state, if Parliament be then sitting, or if Parliament be not sitting, then within six weeks of the meeting thereof.

Treasurers of counties or of divisions of counties to publish once in every year an abstract account of their receipts and expenditures.

LI. In the construction of this Act the word "county" shall mean and include any riding or division having a separate commission of the peace, or separate county treasurer, and any liberty, franchise, or other place in which rates in the nature of county rates may be levied, having a separate

The Act extended to all places having a separate commission of

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the peace, and to all rates of the nature of county rates.

commission of the peace, and not subject to the jurisdiction of the county or counties at large in which such liberty, franchise, or place may lie, nor contributing or paying to the county rates made for such county or counties at large; and that the words "county rate" shall mean and include every rate or tax assessed in any county or any division of a county as aforesaid for all or any of the purposes to which county rate or stock is or may hereafter be made liable.

Construction of the words "parish," "union," "guardians."

LII. The word "parish" shall be construed to include any township, vill, or place maintaining its own poor, whether parochial or extra-parochial, or any part of a parish, township, vill, or other place for which a separate poor rate may be made; the word "union" shall be construed to mean and include any number of parishes united under the Act passed in the fifth year of the reign of his late Majesty William the Fourth "For the Amendment and better Administration of the Laws relating to the Poor in England," or under an Act passed in the twenty-second year of the reign of his late Majesty King George the Third "For the better Relief and Employment of the Poor," or under any local Act; and the word "guardians" shall mean and include any board of guardians acting under the provisions of the said Act passed in the fifth year of his late Majesty King William the Fourth, and empowered to relieve the poor of any parish or union, and the visitors, guardians, directors, managers, acting guardians, vestrymen, or other officers in a union appointed to act in the ordering of relief of the poor from the poor rate under any general or local Act of Parliament; and the word "hundred" shall mean and include any hundred, wapentake, ward, or other district in the nature of a hundred, by whatever name denominated.

SCHEDULE TO WHICH THIS ACT REFERS.

Form of Precept.

County of ——, to wit. } To the Guardians of the —— Union.

THESE are to require you, the Guardians of the —— Union, from and out of the monies paid into the hands of the treasurer of your union for the uses and purposes of the said union, to pay or cause to be paid, on or before the —— day of —— into the hands of A. B., treasurer of the said county, appointed to receive the same, the sum of ——, being the amount of the several and respective sums of money hereunder set down and expressed opposite to and against the names of the several parishes, townships,

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or places comprised within your said union, the said several sums being respectively charged and assessed thereon as the proportion of the several parishes, townships, or places towards the general county rate, at —— in the pound, made at the last quarter sessions [*or* general sessions] of the peace held at —— in and for the said county.

[*Signature of the Clerk of the Peace.*]

Names of Parishes.	County Rate, at —— in the Pound.
	£ s. d.

17 & 18 VICT. Cap. 125.

An Act for the further Amendment of the Process, Practice, and Mode of pleading in and enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham. [12*th August*, 1854.]

Proceedings for prerogative writ of mandamus accelerated.

LXXVI. Upon application by motion for any writ of mandamus in the Court of Queen's Bench, the rule may in all cases be absolute in the first instance, if the court shall think fit; and the writ may bear teste on the day of its issuing, and may be made returnable forthwith, whether in term or in vacation, but time may be allowed to return it, by the court or a judge, either with or without terms.

Proceedings on prerogative writ of mandamus.

LXXVII. The provisions of "The Common Law Procedure Act, 1852," and of this Act, so far as they are applicable, shall apply to the pleadings and proceedings upon a prerogative writ of mandamus issued by the Court of Queen's Bench.

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A LIST

OF THE

BOROUGHS IN ENGLAND AND WALES,

In which separate Courts of Quarter Sessions exist, or to which they have been granted under the Municipal Corporation Act; and the Names of the present Recorders.

City or Borough.	*Name of Recorder.*
Abingdon	Thomas Bros.
Andover	Archibald John Stephens.
Banbury	James Manning, Q. A. S.
Barnstaple	Wm. Mackworth Praed.
Bath	David Jardine.
Bedford	Thomas Borrow Burcham.
Berwick-upon-Tweed	Robert Ingham, Q. C.
Birmingham	Mat. Davenport Hill (pat. prec.)
Bolton	Robt. Baynes Armstrong, Q.C.
Bridgewater	John Roy Allen.
Brighton	Edwin James, Q. C.
Bristol	Sir A. J. E. Cockburn, A. G.
Buckingham	John Barnard Byles, S. L. (pat.
Bury St. Edmunds	Wm. Gurdon. [prec.)
Cambridge	Henry Storks, S. L. (pat. prec.)
Canterbury	John Deedes.
Carmarthen	John Johnes.
Chester	Wm. Newland Welsby.
Chichester	Wm. Milton Bridger.
Colchester	Charles Gray Round.
Dartmouth	Thomas Williams Saunders.
Deal	John Deedes.
Derby	John Balguy, Q. C.
Devizes	Henry Alworth Merewether.
Devonport	Charles Saunders. [Q.C.
Doncaster	Robert Hall.
Dover	Wm. Henry Bodkin.
Exeter	John Alex. Kinglake, S. L. (pat. [prec.)
Falmouth	Charles Dacres Bevan.
Faversham	William Clarkson.

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City or Borough.	*Name of Recorder.*
Folkestone	J. J. Lonsdale.
Gloucester	Chas. Shapland Whitmore, Q.C.
Grantham	Wm. Henry Roberts.
Guildford	Hon. Geo. Chapple Norton.
Hastings	Wm. Wakeford Attree.
Helston	Charles D. Bevan.
Hereford	Henry Horn.
Hull	Samuel Warren, Q. C.
Hythe	Henry Plumptre Gipps.
Ipswich	David Power.
Leeds	Thomas Flower Ellis
Leicester	John Mellor, Q.C.
Lichfield	H. W. Cripps.
Lincoln	Nathaniel Richard Clarke, S.L.
Liverpool	Gilbert Henderson.
Ludlow	Henry John Hodgson.
Lynn	Martin John West.
Maidstone	Sir Walter B. Riddell, Bart.
Maldon	Fredk. Walford.
Manchester	Robt. Baynes Armstrong, Q. C.
Newark	N. R. Clarke, S. L.
Newbury	G. M. Dowdeswell.
Newcastle-on-Tyne	Wm. Digby Seymour.
Newcastle-under-Lyne	Sir Fortunatus Dwarris, Knt.
Northampton	N. R. Clarke, S. L.
Norwich	Michael Prendergast, Q. C.
Nottingham	Richard Wildman.
Oswestry	John Robert Kenyon.
Oxford	Jas. Manning, Q. A. S.
Penzance	Charles Dacres Bevan.
Plymouth	Charles Saunders.
Pontefract	P. A. Pickering, Q. C.
Poole	William Hodges.
Portsmouth	John Duke Coleridge.
Preston	Thomas Batty Addison.
Reading	H. A. Merewether, S. L. (pat.
Richmond	Chas. Heneage Elsley. [prec.)
Rochester	James Espinasse.
Rye	Wm. Wakeford Attree.

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City or Borough.	*Name of Recorder.*
Saffron Waldon	Fredk. Walford.
Salisbury	John David Chambers.
Sandwich	John Deedes.
Scarborough	Hon. Edmund Phipps.
Shrewsbury	Charles Harwood.
Southampton	Charles Saunders.
Stamford	George Boden.
Sudbury	Jas. Manning, Q. A. S.
Tewkesbury	Alex. Wright Daniel.
Thetford	Thos. Jacob Birch.
Tiverton	John Tyrrell.
Walsall	N. R. Clarke, S. L.
Warwick	Sir J. E. Eardley Wilmot, Bart.
Wells	Graham Willmore, Q. C.
Wenlock	Uvedale Corbet.
Wigan	Robert Segar.
Winchester	John Shapland Stock.
Windsor, New	Allen Maclean Skinner.
Worcester	John Buckle.
Yarmouth, Great	Nathaniel Palmer.
York	Chas. Heneage Elsley.

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BOROUGH COURT RULES.

RULES FOR REGULATING THE PRACTICE OF THE COURT OF RECORD FOR THE TRIAL OF CIVIL ACTIONS IN THE BOROUGH OF PORTSMOUTH, MADE AND ALLOWED IN PURSUANCE OF THE STATUTES IN THAT CASE MADE AND PROVIDED.

[THE following rules, with the exception of some few alterations and additions, a portion of which were rendered necessary by *local* circumstances, are the same as those adopted for the court at Bury St. Edmunds by Mr. Gurdon, who formed his rules after the model of those framed by Mr. Carey for the borough court in the city of Wells. It should be observed that these latter rules have been printed, and that the learned Judges have expressed an unwillingness to allow any deviation from them, desiring that they should be followed as nearly as circumstances will permit, in order that one uniform system of practice may be established in the various borough courts throughout England and Wales.] (1)

IT IS ORDERED, that the following Rules shall be in force from the day of the date of the allowance thereof.

I. The court shall be holden, as well for the trial of issues in fact and in law as for all other purposes within the competency of the court, four times in every year at the least: that is to say, once in each of the periods between the 15th of December and the 15th of January; between the 15th of March and the 15th of April; between the 15th of June and the 15th of July; and between the 15th of September and the 27th of October, before the recorder; or (in the absence of the recorder) before such person as may be lawfully appointed by the recorder, under the provisions of 6 & 7 Will. 4, c. 105, s. 9, to be judge of the court.

II. The court shall be holden for all purposes within the competency of the court, except the trial of issues in fact or in law, on the first and third Thursday in every month, before the recorder; or, in his absence, before the judge of the court, if any, so appointed by the recorder; or, in the absence both of the recorder and of such judge, before the person, if any,

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(1) By s. 228 of the Common Law Procedure Act, 1852, and by s. 105 of the Common Law Procedure Act, 1854, the Queen is empowered, by order in council, to apply the provisions of those Acts respectively to any court of record in England or Wales. And by the 103rd section of the latter Act, the enactments contained in the *evidence clauses* of that Act (ss. 19—32 inclusive) are to apply and extend to every court of civil judicature in England and Ireland.

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appointed by the recorder, under the provisions of the statute 7 Will. 4 & 1 Vict. c. 78, s. 32; or, in the absence of the recorder and of such judge, and of such person so appointed by the recorder as last aforesaid, before the registrar.

III. All the provisions in these rules respecting the recorder, shall be deemed in the absence of the recorder to apply to the judge of the court, if any, appointed by the recorder, under the provisions of 6 & 7 Will. 4, c. 105, s. 9; and all the provisions in these rules respecting the registrar, so far as they relate to the granting or refusing of any order or any matter incident thereto, shall be deemed to apply to the person, if any, appointed by the recorder, under the provisions of 7 Will. 4 & 1 Vict. c. 78, s. 32.

IV. The office of the registrar shall be open between the hours of eleven and five on every day not being a Sunday, Christmas day, Good Friday, or a day appointed for a public fast or thanksgiving.

V. All writs must be issued, appearances entered, and pleadings filed by the registrar, at his office; and all rules, orders, and affidavits, and all other matters and things, except the trial of issues in fact or in law, in any way relating to the business of the court, may be made, sworn, or done, either in court or out of court, by or before the registrar; except such things as are required to be done in court, either by these rules or by any law or statute.

VI. The party suing out any writ, or his attorney, shall prepare such writ; and the registrar, on payment of his fee, shall sign and seal the same.

VII. Every writ shall bear date on the day on which the same is issued, whether it be a court day or not.

VIII. Every writ in the Queen's name shall be tested in the name of the recorder.

IX. No pledges to prosecute shall be required in any action.

X. Every writ of summons shall contain the names of all the defendants, if more than one in the action; and shall not contain the name or names of any defendant or defendants in more actions than one.

XI. A writ of summons may, within the jurisdiction of the court, and not elsewhere, be served by the serjeants at mace, in the same manner as a writ of summons issuing out of any of the superior courts.

XII. The officer serving a writ of summons shall (within three days after such service) indorse on such writ the day of the week and month of such service, otherwise the plaintiff shall not be at liberty to enter an appearance for the defendant.

XIII. No writ of summons shall be in force for more than four calendar months from the date thereof, including the day of such date; but every such writ may be continued by alias and pluries as the case may require, if any defendant therein named has not been served therewith.

XIV. Every such writ issued in continuation of a pre-

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ceding writ, shall be issued within twelve calendar months after the day of the date of the preceding writ, and not afterwards.

XV. No first writ of summons shall be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited; unless the defendant shall be served therewith, or unless such writ, and every writ (if any) issued in continuation of a preceding writ, shall be returned *non est inventus*, and entered of record within one calendar month next after the expiration thereof, including the day of such expiration; and unless every writ issued in continuation of a preceding writ shall be issued within one such calendar month after the expiration of the preceding writ, and shall contain a memorandum indorsed thereon or subscribed thereto, specifying the day of the date of the first writ, either by the plaintiff or his attorney suing out the same.

XVI. When any writ of summons shall be served, all necessary proceedings to judgment and execution may be had thereon without delay, at the expiration of eight days from the service thereof, on whatever day the last of such eight days may happen to fall, whether it be a court day or not.

Provided, that if the last of such eight days shall fall on a Sunday, Christmas-day, Good Friday, or any day appointed for a public fast or thanksgiving, the following day shall be considered as the last of such eight days.

XVII. Every writ of summons issued for the recovery of any debt, and every copy of such writ, shall be indorsed with the amount of the debt, and the amount of what the plaintiff's attorney claims for costs; and upon the payment thereof within four days after each service to the plaintiff or his attorney, further proceedings shall be stayed.

XVIII. The amount of the plaintiff's costs to be indorsed on the writ of summons shall be absolutely fixed by a rule of court, and if any overcharge be made by the plaintiff's attorney, such attorney shall pay the costs of any application made to the court to reduce the amount to the sum fixed by the rule of court.

XIX. If it shall be made to appear by affidavit to the satisfaction of the court, that any defendant has not been personally served with any such writ of summons, and has not according to the exigency thereof appeared to the action, and cannot be compelled to do so without some more efficacious process; in any such case, the court may order a writ of distringas to be issued, directed to the serjeants at mace (or to any other officer named in such writ), to compel the appearance of such defendant; and to every such writ of distringas shall be subscribed a notice similar to that which is required in the superior courts.

XX. A true copy of every such writ of distringas and notice shall be delivered therewith to the serjeant at mace, or other officer to whom such writ shall be directed.

XXI. Every such writ of distringas shall be made return-

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able on a day certain, being a court day, to be named therein, not being less than fifteen days after the teste thereof.

XXII. The writ of distringas and notice, or a copy thereof, shall be served on the defendant, if he can be met with, or, if not, shall be left at the place where the distringas is executed.

XXIII. Every writ of summons or distringas shall be indorsed with the name and place of business of the attorney actually suing out the same; but in case no attorney shall be employed for that purpose, then with a memorandum expressing that the same has been sued out by the plaintiff in person, and mentioning the place of such plaintiff's residence.

XXIV. Every attorney whose name shall be indorsed on any writ of summons or distringas, shall, on demand in writing made by or on behalf of any defendant, declare forthwith whether such writ has been issued by him, or with his authority or privity.

XXV. If such attorney shall answer in the affirmative, he shall also, in case the court or the registrar shall so order and direct, declare in writing within two days, the profession, occupation, or quality, and place of abode of the plaintiff.

XXVI. If such attorney shall refuse or neglect to make any declaration required by either of the two preceding rules, or shall declare that the writ was not issued by him, or with his authority or privity, all the proceedings in the action shall be stayed, till the court or registrar shall further order.

XXVII. All such proceedings as are mentioned in any writ, notice, or warning, issued under these rules, may be taken in default of the defendant's appearance.

XXVIII. If the plaintiff or his attorney shall omit to insert in, or indorse on any writ, or on any copy thereof, any of the matters required to be by him inserted therein, or indorsed thereon, such writ or copy thereof shall not on that account be held void, but may be set aside as irregular, upon application to be made to the court or to the registrar, or may be amended by the court or registrar, on payment of costs.

XXIX. No application to set aside process or proceedings for irregularity shall be allowed, unless made within a reasonable time, nor if the party applying has taken a fresh step after knowledge of the irregularity.

XXX. The mode of appearance to every writ of summons shall be by delivering to the registrar a written memorandum of appearance, dated on the day of the delivery thereof.

XXXI. If the defendant has been personally served with a writ of summons, and does not enter an appearance within eight days after such service inclusive of the day of such service, the plaintiff may enter an appearance for him, upon filing an affidavit of such service.

XXXII. Where a writ of distringas has been issued, and the serjeants at mace, or other officer as aforesaid, has made his return that he has levied 40*s.*, then, if the defendant does not appear, the plaintiff after the expiration of eight

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days from the return of the writ may enter an appearance for him without any affidavit.

XXXIII. If the plaintiff (or in an action where there are more plaintiffs than one), if all the plaintiffs reside without the jurisdiction of the court, the defendant may upon affidavit take out a summons for the plaintiff, to shew cause before the court or the registrar why all proceedings should not be stayed, until security be given for costs; and if an order or rule be made thereon, all proceedings shall be stayed until an undertaking to pay such costs shall be given by one sufficient housekeeper residing within the jurisdiction of the court, to be approved by the court or registrar.

XXXIV. If the plaintiff shall discontinue, or become non-suit, or a verdict shall pass against him, the said undertaking may be made a rule of court, and for non-performance thereof the defendant may have an attachment against the person entering into such undertaking, upon affidavit of the costs having been demanded of such person and not paid.

XXXV. No attorney or his clerk shall enter into such undertaking.

XXXVI. The application to compel a plaintiff to give security for costs must, in ordinary cases, be made before issue joined.

XXXVII. Provided that after issue joined such application may, under *special* circumstances, be made to the court or the recorder, upon summons.

XXXVIII. A plaintiff shall be at liberty to declare as soon as an appearance is entered.

XXXIX. A plaintiff shall be deemed out of court, unless he declare within six calendar months after the process is returnable.

XL. If the plaintiff does not declare within two calendar months next after the process is returnable, the defendant may, at the expiration of four days after a written demand of declaration, sign judgment of *non pros.*

XLI. Provided that an order for further time to declare may be granted by the court or the registrar, on summons.

XLII. All declarations and other pleadings shall be filed with the registrar, and every declaration or other pleading shall be intitled of the day of the month and year on which it is filed.

XLIII. Every party filing any declaration, or other pleading, shall give notice thereof to the opposite party.

XLIV. The notice of declaration shall contain the Christian and surnames of all the parties to the suit, and the nature of the action; together with a warning, that if the defendant does not plead thereto in *eight* days the plaintiff will sign judgment without further notice or demand.

XLV. The form of the declaration and every other pleading shall be the same as in the superior courts, except that every material fact must be averred to have been within the jurisdiction of the court.

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XLVI. The time allowed to the defendant to plead shall be eight days from the service of the notice of declaration.

XLVII. All dilatory pleas and special demurrers shall be filed before the expiration of such eight days; and if filed at any time afterwards, the plaintiff may sign judgment as for want of a plea.

XLVIII. With respect to any plea, not being a dilatory plea, or special demurrer, one order for time to plead (not exceeding eight days) may be obtained from the registrar upon summons.

XLIX. All orders for further time to plead must be granted by the court or the recorder upon summons.

L. If the defendant do not plead within the time first mentioned, or any such enlarged time as aforesaid, the plaintiff may sign judgment.

LI. Provided that the defendant may file any plea not being a dilatory plea or special demurrer, at any time before judgment signed.

LII. Leave to plead several matters may be granted by the court or the registrar upon summons, accompanied by a short abstract or statement of the intended pleas: provided that in the following cases, namely—where the plea of non assumpsit, or non detinet, or never was indebted, with or without a plea of tender as to part, or plea of the Statute of Limitations, set-off, bankruptcy, the defendant's discharge under an Insolvent Act, plene administravit, plene administravit præter, infancy, or coverture, or any two or more of such pleas shall be pleaded together, no order shall be required.

LIII. If a defendant plead several pleas without a rule or order in any case where a rule or order is requisite, the plaintiff shall be at liberty to sign judgment.

LIV. Where the defendant shall plead a plea of judgment recovered in another court, he shall in the margin of such plea state the date of such judgment; and if such judgment shall be in a court of record, the number of the roll on which such proceedings are entered, if any, and in default of his so doing, the plaintiff shall be at liberty to sign judgment as for want of a plea; and in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer, or person having the custody of the record or proceedings of the court, where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea, by leave of the court.

LV. Every order to discontinue an action before or after plea pleaded, shall contain an undertaking on the part of the plaintiff to pay the costs; and a consent, that if they are not paid within four days after taxation, the defendant shall be at liberty to sign judgment of *non pros.*

LVI. The defendant shall not be at liberty to waive his plea, without leave of the court.

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LVII. No plea or other pleading shall require any signature whatever.

LVIII. In actions of indebitatus assumpsit, or debt on simple contract, the plaintiff, together with the notice of declaration, shall deliver full particulars of his demand, where the same can be comprised within three folios, and where the same cannot be comprised within three folios, he shall deliver such a statement of the nature of his claim, and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios.

LIX. If any notice of declaration shall be delivered without such particulars or such statement as aforesaid, and the registrar shall afterwards order a delivery of the particulars, the plaintiff shall not be allowed any costs in respect of such order, or of the particulars he may afterwards deliver, unless the registrar shall specially order.

LX. If in the particulars of his demand the plaintiff gives credit for any specific sum or sums of money therein admitted to have been paid to him, it shall not be necessary for the defendant to plead the payment of such sum or sums.

LXI. But if the plaintiff, after stating the amount of his demand, states (without giving credit for any particular sum or sums) that he seeks to recover a certain balance, the defendant will not be allowed to give evidence of the payment of any sum or sums without such payment being specially pleaded.

LXII. An order for particulars of demand, or a summons for further particulars and a rule or order thereupon, may be obtained by a defendant before appearance.

LXIII. In all cases in which particulars of set-off are necessary, the defendant shall deliver the same with his notice of plea; and if he neglects to do so, he shall be precluded from giving any evidence of his set-off, unless, upon application to the court or the registrar, upon summons, leave shall be obtained to deliver such particulars at a subsequent period; but the defendant shall not be allowed any costs in respect of such application, or of the delivery of such particulars.

LXIV. In every action for the recovery of a debt or liquidated damages, the defendant shall be at liberty to pay money into court without any order for that purpose, and such payment shall in all cases be pleaded, and, as near as may be, in the form used in the superior courts.

LXV. The money shall be paid to the registrar, who shall give a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the plaintiff on demand. The subsequent proceedings shall be the same as in the superior courts.

LXVI. If six calendar months have elapsed since the last entry or proceeding in any cause, no proceeding shall be had by either party, unless twelve days previous notice be given to the other party.

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LXVII. A demand of a replication or other subsequent pleading may be inserted in the notice of the plea or other pleading to which an answer is required.

LXVIII. If such demand be so inserted, the party served with such notice shall reply or rejoin, as the case may be, within eight days next after such service, or judgment may be signed. If no such demand is inserted in such notice, then judgment cannot be signed until the expiration of eight days next after a demand in writing of such replication or subsequent pleading.

LXIX. A rule or order for further time to reply, rejoin, or plead any subsequent pleading may be granted by the court or the registrar, on summons.

LXX. Judgment of *non pros* may be signed against the plaintiff, and judgment by default may be signed against the defendant, at the opening of the registrar's office, on the morning next after the expiration of the time specified in the demand of declaration, or subsequent pleading; or, on the morning next after the expiration of any further time which may have been granted for filing such declaration or other pleading. Such judgment to be signed by the registrar by an order to that purpose on his book.

LXXI. No interlocutory judgment shall be set aside unless by order of the court on summons.

LXXII. After judgment by default in debt or simple contract, the plaintiff shall, on issuing execution, follow the practice of the superior courts.

LXXIII. Where the plaintiff has signed interlocutory judgment more than six days before any sitting of the court, he shall be entitled, upon giving the notice required by these rules, to execute at such court an inquiry for the assessment of damages.

LXXIV. But in actions of assumpsit on bills of exchange or promissory notes, a rule or order may be obtained on summons, for a reference to the registrar, to compute principal and interest on such instrument, and upon such rule or order being obtained, the registrar shall forthwith make an appointment for that purpose; and at such appointment shall proceed to make such computation, on proof that notice of the appointment has been served on the opposite party.

LXXV. In the execution of an inquiry, the same proceedings shall be had as upon the execution of a writ of inquiry issuing out of any of the superior courts; except, that instead of the jurors signing and sealing an inquisition, the verdict of the jury shall be entered by the registrar in the same manner as on the trial of an issue.

LXXVI. It shall not be necessary to plead a *similiter*; but on the expiration of eight days next after the filing of the pleading to which it is required, the registrar may add it.

LXXVII. Provided that if the last pleading of the defendant concludes to the country, the plaintiff may file a simi-

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liter forthwith. No notice of a similiter shall be served on the opposite party.

LXXVIII. Six days notice shall be given as well for the trial of an issue in fact, as for the execution of an inquiry.

LXXIX. Where issue in fact has been joined ten days before any sitting of the court for the trial of issues, if the plaintiff does not try the cause at such court, the defendant may, by giving six days notice, bring it on to trial by proviso, at any subsequent sitting of the court for the trial of issues.

LXXX. When notice of trial or inquiry has been given, notice of countermand of trial or inquiry may be served on the opposite party two clear days before the day fixed for the trial or inquiry. In default of such notice of countermand, the party neglecting to proceed according to his notice of trial or inquiry, shall pay to the opposite party the costs of the day.

LXXXI. But a trial or inquiry may be postponed on good cause shewn, subject to the discretion of the court, and on such terms as the court may impose.

LXXXII. Every cause wherein an issue in fact is to be tried, or an inquiry to be executed, shall be entered with the registrar, by giving him notice in writing of such intended trial or inquiry, six days before the sitting of the court for the trial of issues.

LXXXIII. The party entering the cause shall also, six clear days before such sitting of the court, leave with the registrar a fair copy of the particulars of the plaintiff's demand, and of the defendant's set-off, if any.

LXXXIV. On the trial of every cause and the execution of every inquiry, the declaration, pleadings, and particulars shall be produced by the registrar, annexed to each other in their order, and at the foot thereof shall be entered the verdict or assessment of damages, and the whole shall be indorsed by the registrar, with a number, and afterwards kept by him among the records of the court.

LXXXV. Three days at the least before the sitting of the court for the trial of issues, or for the execution of any writ of inquiry, the registrar shall cause the jurors to be summoned.

LXXXVI. The registrar shall keep in his office the panel of the jurors so summoned for two days at least before the sitting of the court, and the parties in all causes entered for trial, and their respective attornies, shall have full liberty to inspect such panel on demand, without payment of any fee.

LXXXVII. No jury process shall be annexed to the record or other entry of the proceedings.

LXXXVIII. The registrar shall cause the names of the jurors to be written severally on slips of card, and put into a box, and shall draw out of the box the names of the jurors to serve on the trial of every cause or the execution of every inquiry.

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LXXXIX. Every demurrer shall be filed with the registrar, and notice thereof be given to the opposite party.

XC. The party demurring may demand a joinder in demurrer, and the opposite party shall be bound within four days after such demand to file the same, otherwise judgment.

XCI. Every demurrer to which joinder shall be filed six days before any sitting of the court for the trial of issues, shall be inserted in the cause list by the registrar.

XCII. On the argument of every demurrer, the declaration and pleadings shall be produced by the registrar, as on the trial of an issue in fact.

XCIII. Costs may be taxed by the registrar, and final judgment signed, and execution issued, on any day subsequent to the day on which the issue may have been tried, the inquiry executed, or the damages computed.

XCIV. Provided that the court or the recorder, or, in the case of computation of damages, the registrar, may order proceedings to be stayed.

XCV. One day's notice of taxing costs shall be given in all cases where the defendant has entered an appearance.

XCVI. No costs shall be allowed on taxation to a plaintiff upon any count or issue upon which he has not succeeded; and the costs of all issues found for the defendant shall be deducted from the plaintiff's costs.

XCVII. In all actions of assumpsit, and debt on simple contract after judgment by default, the registrar shall allow only for such part of the declaration as he shall think necessary.

XCVIII. All writs of execution shall be sealed by the registrar, and directed to the serjeants at mace, and may be made returnable immediately after the execution thereof.

XCIX. Provided that every such writ shall be executed within six weeks after the date thereof.

C. No such writ can be executed except within the jurisdiction of the court.

CI. The court shall exercise the power of entering nonsuits and verdicts in the same manner, and subject to the same rules, as in the superior courts.

CII. Application may be made for a new trial in arrest of judgment, for judgment non obstante veredicto, or for a repleader, before the rising of the court at which the cause was tried, but not afterwards.

CIII. Every notice, summons, order, and rule shall be served within the jurisdiction of the court, and not elsewhere, between the hours of nine o'clock in the morning and eight o'clock in the evening.

CIV. Every attorney practising in the court shall enter in a book to be kept by the registrar, his name and place of business; or if he has no place of business within the jurisdiction of the court, then some other proper place within

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such jurisdiction where he may be served with any notice, summons, order, or rule.

CV. When the party to be served sues or defends by attorney, the notice, summons, order, or rule, shall be served on the attorney in person, or left at his place of business, or other place entered by him in the registrar's book.

CVI. Provided that if such attorney has not entered his place of business, or such other place as aforesaid, in the registrar's book, and cannot be personally served within the jurisdiction of the court, such notice, summons, order, or rule, shall (upon an order to be obtained from the registrar, upon affidavit filed) be stuck up in the registrar's office.

CVII. When the party to be served does not sue or defend by attorney, such notice, summons, order, or rule, may either be served on such party personally, or left at his present or last known place of abode.

CVIII. Provided, that in case the party has no such place of abode within the jurisdiction of the court, and cannot be personally served within such jurisdiction, such notice, summons, order, or rule, shall (upon an order to be obtained from the registrar, upon affidavit filed) be stuck up in the registrar's office.

CIX. It shall not be necessary to the service of any notice, summons, order, or rule, that the original should be shewn, unless sight thereof be demanded, except in cases where the party may be attached for not obeying the same.

CX. All affidavits shall be taken in court, or before the recorder or the registrar.

CXI. The addition of every person making an affidavit shall be inserted therein.

CXII. In all cases in which any particular number of days not expressed to be clear days is prescribed by the rules or practice of this court, the same shall be reckoned exclusively of the first day, and inclusively of the last day; unless the last day shall happen to fall on a Sunday, Christmas-day, Good Friday, or a day appointed for a public fast or thanksgiving, in which case the same shall be reckoned exclusively of that day also.

CXIII. The registrar shall enter in a book or books all the proceedings of the court.

CXIV. The following orders may be obtained from the registrar without any previous summons:

To amend declaration before or after plea, on payment of costs, giving the defendant the same time to plead *de nove* as he had originally.

Consent rules in ejectment.

To discontinue the action upon the terms prescribed by the rules of this court.

To sue or defend by guardian.

For particulars of the plaintiff's demand in an action of debt or indebitatus assumpsit, wherein no bill of par-

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ticulars has been delivered with the notice of declaration.

To serve a notice, summons, order, or rule, in certain cases, by sticking up the same in the registrar's office.

CXV. The following rules may be granted by the court, upon proper affidavits being filed, without any previous summons:—

To issue a distringas.

To sue in formâ pauperis.

CXVI. In all other cases, except where, by these rules, it is required that application should in the first instance be made in court, a summons may be obtained from the registrar, calling upon the party therein named to shew cause why the rule or order prayed for should not be granted.

CXVII. Except where the mode of shewing cause is expressly provided for by these rules, the party summoned may be required to shew cause, either in court or out of court, before either the registrar or any person appointed by the recorder under the provisions of stat. of 7 Will. 4 & 1 Vict. c. 78, ss. 32 & 33.

CXVIII. A writ of error shall be deemed a *supersedeas* from the time of the allowance, provided bail, when necessary, be put in and perfected within four days after the writ of error has been delivered to the registrar.

CXIX. A recognizance of bail in error shall be taken in court, or before the registrar, in double the sum recovered, except in the case of a penalty, and in the case of a penalty in double the sum really due and double the costs.

CXX. No rule or order to certify the record shall be necessary, but the plaintiff in error shall, within twenty days after the allowance of the writ of error, get the record certified by the registrar, and pay his fee thereon.

CXXI. If the plaintiff in error does not get the record certified before the expiration of the twenty days, the defendant in error may sign judgment of *non pros.*

CXXII. The return to the writ of error shall be signed by the recorder or the registrar.

CXXIII. A declaration in ejectment shall be served on the tenant in possession, eight days at least before the sitting of the court.

CXXIV. At such sitting of the court the plaintiff shall be entitled to judgment against the casual ejector upon an affidavit of the service of such declaration.

CXXV. In all cases not provided for by the foregoing rules, the practice of the court shall as near as possible be in conformity with the practice of the superior court.

CXXVI. The sum which shall be allowed for the costs of the writ of summons (against one defendant) including the copy and service, and attending to receive the debt and costs, over and above all fees paid out to the registrar or other officer of the court, shall be as follows, viz.:—

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When the debt exceeds 20*l.*, the sum of 17*s.* 6*d.* and no more.

When the debt shall exceed 5*l.*, and not exceed 20*l.*, the sum of 12*s.* and no more.

When the debt shall not exceed 5*l.*, the sum of 8*s.* 6*d.* and no more.

And for each additional defendant there shall be allowed the sum of 3*s.*, in which case the amount stated in the indorsement shall vary accordingly.

I approve the above Rules, and in witness thereof I hereunto set my hand this 27th day of January, 1842.

CHR. RAWLINSON, *Recorder.*

Allowed and confirmed the 28th day of January, 1842.

J. PARKE.
E. H. ALDERSON.
J. GURNEY.

SCHEDULE OF FORMS.

No. I.—*Writ of Summons.*

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To C. D. of [*street or other local description in the borough of Portsmouth*], Greeting. We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Record for the trial of civil actions in our borough of Portsmouth, in an action [*of debt*] at the suit of A. B. And take notice, that, in default of your so doing, the said A. B. may cause an appearance to be entered for you, and proceed therein to judgment and execution. Witness C. R., Recorder, at Portsmouth, the —— day of —— in the year of our Lord, 18—.

Memorandum to be subscribed to the Writ.

N.B.—This writ is to be served within the jurisdiction of the court and not elsewhere, and within four calendar

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months from the date thereof, including the day of such date, and not afterwards.

Indorsements to be made on the Writ before Service thereof.

No. 1.

This writ was issued by P. A., of ——, attorney for the said A. B.

OR,

This writ was issued in person by the plaintiff within-named, who resides at ——.

No. 2.—*If the Action is for the Recovery of a Debt.*

The plaintiff claims £— for debt, and £— for costs; and if the amount thereof be paid to the plaintiff or his attorney within five days from the service hereof, further proceedings will be stayed.

Indorsement to be made on the Writ after Service thereof.

This writ was served by me, X. Y., on C. D., within the jurisdiction of the Court, on the —— day of ——, 18—.

X. Y.

No. II.—*Writ of Distringas.*

VICTORIA, &c. To the Serjeants at Mace of our borough of Portsmouth, greeting: We command you, that you, or one of you, do distrain upon the goods and chattels of C. D., within the jurisdiction of our Court of Record for the trial of civil actions in our said borough, for the sum of forty shillings, in order to compel his appearance in our said Court, to answer A. B in an action [on the case, *or as the form of the action is*], and how you shall execute this our writ make known to our Court, on the —— day of —— now next ensuing. Witness, C. R., Recorder, at Portsmouth, the —— day of ——, in the year of our Lord, 18—.

Notice to be subscribed to the foregoing Writ.

In the Court of Record for the trial of civil actions, in the borough of Portsmouth.

Between { A. B., plaintiff, and C. D., defendant.

Mr. C. D.—Take notice, that I have this day distrained upon your goods and chattels in the said borough, in the sum of

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forty shillings, in consequence of your not having appeared in the said Court to answer to the said A. B., according to the exigency of a writ of summons bearing date on the —— day of ——; and that in default of your appearance to the present writ within eight days inclusive after the return hereof, the said A. B. will cause an appearance to be entered for you, and proceed thereon to judgment and execution.

No. III.—*Appearance.*

In the Court of Record for the trial of civil actions, in the borough of Portsmouth.

A. B., plaintiff,
against
C. D., defendant.

The defendant, C. D., appears in person;
OR,
D. A., attorney for C. D., appears for him;
OR,
P. A., attorney for the plaintiff, appears for the defendant, according to the practice of the Court.

Entered the —— day of ——, A.D. 18—.

No. IV.—*Demand of Declaration.*

In the Court of Record for the trial of civil actions, in the borough of Portsmouth.

A. B. *v.* C. D.

The defendant demands a declaration in this cause to be filed within four days, otherwise *nos pros.* Dated the —— day of ——, A.D. 18—.

D. A., defendant's attorney.

To A. B., plaintiff;
OR,
To Mr. P. A., plaintiff's attorney.

No. V.—*Form of Declaration.*

In the Court of Record for the trial of civil actions, in the borough of Portsmouth.

On the —— day of —— A.D. 18—.

PORTSMOUTH, TO WIT. } A. B., by P. A., his attorney [*or* in his own proper person], complains of C. D., who has been summoned to answer the said A. B., in an action [upon promises, *or as the case may be*].

For that whereas the defendant, on the —— day of ——, A.D. 18—, and within the jurisdiction of this Court, was in-

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debted to the plaintiff in £19 for goods, then and within the said jurisdiction sold and delivered by the plaintiff to the defendant, at his request—[*or here state the subject-matter of the declaration, laying every material fact to be within the jurisdiction of the Court, as in the following precedent.*]

And in £19, for money found to be due and owing from the defendant to the plaintiff, on an account then and within the said jurisdiction stated between them.

And thereupon the defendant, in consideration of the premises, respectively, then and within the said jurisdiction promised the plaintiff to pay him the said several monies respectively on request; yet he hath disregarded his promises, and hath not paid any of the said monies or any part thereof.

Conclusion of Declaration.

To the plaintiff's damage of £19; and thereupon he brings suit, &c.

No. VI.—*Notice of Declaration.*

In the Court of Record for the trial of civil actions, in the borough of Portsmouth.

Between { A. B., plaintiff, and C. D., defendant.

Take notice, that a declaration was [*this day*] filed with the registrar of the said Court against you [*or, if the defendant has appeared by attorney*, against the said defendant], at the suit of the above-named plaintiff, in an action [of debt, *or as the case may be*], and unless you [*or* the defendant] plead thereto within eight days after the service hereof, judgment will be signed against you [*or* him] by default, without any further notice or demand.—Dated the —— day of ——, A.D. 18—.

A. B., plaintiff,
OR,
P. A., plaintiff's attorney.

To C. D., the above-named defendant;
OR,
To D. A., defendant's attorney.

No. VII.—*Summons to Jurors.*

Court of Record for the trial of civil actions, in the borough of Portsmouth.

You are hereby required to attend and serve as a juror at the holding of the Court for the trial of issues before the Recorder, at the Sessions Room of the said borough, on the ——

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day of —— next, at —— o'clock.—Given under my hand this —— day of ——, A.D. 18—.

To Mr. A. B. J. H., Registrar.

No. VIII.—*Subpœna ad Testificandum on the Trial of an Issue.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To A. B., &c., greeting: We command you and every of you, that, all other things omitted, and every excuse set aside, you and every of you be in your own proper persons in our Court of Record for the trial of civil actions in our borough of Portsmouth, at the next sitting of the said Court for the trial of issues, at the Sessions Room of the said borough, on the —— day of —— next, to testify and speak the truth in a certain action now depending in our said Court, between A. B., plaintiff, and C. D., defendant, in an action [on promises, *or as the case may be*], on the part of the said plaintiff [*or* defendant], and this you or any of you shall by no means omit, under the penalty upon each of you of £50. Witness C. R., Recorder, at Portsmouth, the —— day of ——, in the year of our Lord 18—.

NOTE.—*A subpœna duces tecum may be in like form, adding only*—"And also that you bring with you and produce at the time and place aforesaid," [*stating the Deeds, &c.*]

No. IX.—*Form of a Record.*.

Pleas of the Court of our Lady the Queen, of Record, for the trial of civil actions in the borough of Portsmouth, in the county of Southampton, holden within the said borough, at the Sessions Room, by virtue of the letters patent of Charles the First, under the Great Seal of England, in that behalf made in the third year of his reign.

On the —— day of ——, A.D. 18—.

[*Date of the Declaration.*]

Be it remembered, that heretofore, by virtue of a writ issued on the —— day of ——, in the year of our Lord 18—, C. D. was summoned to answer A. B. in an action [upon promises, *or as the case may be*], and thereupon afterwards, to wit, on the —— day of ——, the said C. D. appeared in Court to the said action; and now at this day the said A. B., by —— his attorney, complains of the said C. D. for that [*here set out the declaration, the subsequent pleadings and the joinder of issue*]. And thereupon the registrar causes to be summoned [*thirty-six*] jurors of the said borough, qualified and liable to serve in that behalf, to serve as jurors at the next holding of the said Court of Record for the trial of causes, according to

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the form of the statute in that case made and provided. Afterwards, on the —— day of ——in the year of our Lord, 18—, at the holding of the said Court for the trial of causes, before C. R. the Recorder of the said borough [*or* before A. C., in the absence of the Recorder, Judge of the same Court], come the parties aforesaid, by their attornies aforesaid, and the jurors duly summoned as above mentioned also come, twelve of whom being duly sworn to try the said issues above mentioned, say upon their oath, that the defendant did promise in manner and form as the plaintiff hath above complained against him. And they assess the damages of the plaintiff on the occasion of the non-performing of the promises above mentioned over and above his costs and charges by him about his suit in this behalf expended, to £——, and for those costs and charges to forty shillings.

And thereupon afterwards, to wit, on the —— day of ——, in the year of our Lord 18—, it is considered by the Court that the said A. B. do recover against the said C. D. his said damages, costs, and charges, by the jurors aforesaid in form aforesaid assessed; and also £—— for his costs and charges by the Court here adjudged of increase to the said A. B., with his assent, which said damages, costs, and charges in the whole amount to £——. And the said C. D. in mercy.

No. X.—*Writ of Fieri Facias.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To the Serjeants at Mace of our borough of Portsmouth, greeting: We command you, that of the goods and chattels of C. D., within the jurisdiction of our Court of Record for the trial of civil actions in our said borough, you or one of you do cause to be made £——, which A. B. in our said Court recovered against the said C. D. for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings then lately made by the said C. D. to the said A. B. as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted as appears to us of record; together with interest upon the said sum of £——, at the rate of four pounds per centum per annum, from the —— day of ——, in the year of our Lord 18—, on which day the judgment aforesaid was entered up; and that you or one of you have that money with such interest as aforesaid in our said Court immediately after the execution hereof, to be rendered to the said A. B. for his damages and interest as aforesaid; and that you, or one of you, do all such things as by the statute passed in the second year of our reign you are authorised and required to do in this behalf.

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And in what manner you or either of you shall have executed this our writ make appear to us in our said Court of Record immediately after the execution hereof. And have there then this writ. Witness C. R., Recorder, at Portsmouth, on the —— day of ——, in the year of our Lord 18—.

Indorsement thereon.

"Levy the whole [*or* levy £——] besides officer's fees, and all other incidental expenses."

The within writ was issued on the —— day of ——, 18—, by P. A., of ——, attorney for the within-named plaintiff.

No. XI.—*Writ of Capias ad Satisfaciendum.*

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To the Serjeants at Mace of our borough of Portsmouth, greeting: We command you, that you or one of you do take C. D., if he shall be found within the jurisdiction of our Court of Record for the trial of civil actions in our said borough, and him safely keep so that you or one of you may have his body in our said Court immediately after the execution hereof, to satisfy A. B. £——, which the said A. B. lately in our said Court recovered against the said C. D. for his damages which he had sustained as well on occasion of the not performing of certain promises and undertakings [*or* promise and undertaking] then lately made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as appears to us of record, together with interest upon the said sum of £——, at the rate of four pounds per centum per annum from the —— day of ——, in the year of our Lord 18—, on which day the judgment aforesaid was entered up: and have there then this writ. Witness C. R., Recorder, at Portsmouth, on the —— day of ——, in the year of our Lord 18—.

NOTE.—This and all other writs of execution may be made returnable on a Court day specified in such writ.

No. XII.—*Security for Costs.*

In the Court of Record for the trial of civil actions in the borough of Portsmouth.

Between { A. B., plaintiff, and C. D., defendant.

I, X. Y., of —— in the borough of Portsmouth, do hereby

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consent and undertake to pay into this Court on demand by the attorney for the defendant [*if there be any such attorney, if not, then* on demand by the defendant], for the use of the defendant, such costs as the registrar shall on taxation allow in this behalf, in case the said plaintiff shall be condemned, or be nonsuited in or shall discontinue his action. And I agree that this consent and undertaking may be made a rule of this Court, and that for the non-performance thereof an attachment of contempt may issue against me.

(*Signed*) X. Y.

N. B.—All the forms contained in this schedule are to be used with such alterations as the nature of the action, the character of the parties, or the circumstances of the case may render necessary. But any variance not being in matter of substance, shall not affect the validity of any writ or other proceeding.

I approve the above Forms, and in witness thereof I hereunto set my hand this 27th day of January, 1842.

CHR. RAWLINSON, *Recorder*.

Allowed and confirmed the 28th day of January, 1842.

J. PARKE.
E. H. ALDERSON.
J. GURNEY.

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